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Heirs' Property and Land Fractionation:

Fostering Stable Ownership to Prevent Land Loss and Abandonment

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EDITORS' NOTE

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ABSTRACT

Real property passed to subsequent generations via intestate succession (i.e., without a will) is termed a tenancy-in-common, or more colloquially, "heirs' property." Property may also be classed as heirs' property via an intentional simple will that divides real estate assets equally among descendants. With this kind of property ownership, co-heirs hold fractional interests in property that is not physically divided. As such, heirs' property represents a form of collective ownership. Owners are private property holders but are limited in their ability to use such properties to build wealth because creditors typically do not accept these properties as bona fide collateral. Heirs' property ownership is thought to be especially prevalent among rural African Americans in the Black Belt South, Appalachian Whites, Hispanics in U.S. southwestern *colonia* communities, and Native American groups (as fractionated lands). The U.S. Department of Agriculture Forest Service's Southern Research Station and the Federal Reserve Bank of Atlanta hosted a gathering of heirs' property researchers and direct legal service providers on June 15, 2017 in Atlanta, GA, with the aim to clarify problems associated with tenancies for these groups. The convening was organized into panels which addressed estimations of the extent of heirs' property in the South, research on cultural aspects of heirs' property ownership, and experiences of direct legal service providers, and included a discussion of how heirs' property in urban areas contributes to abandoned and blighted buildings. Collaborators also worked to identify opportunities that would improve data collection, decrease property vulnerability, and better protect generational wealth. These proceedings include papers from many of the conference presenters as well as papers contributed by additional subject matter experts.

Keywords: Appalachia, Black Belt, heirs' property, land fractionation, land loss, Uniform Partition of Heirs Property Act.

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Heirs' Property: Implications for Natural Resource Management

Rob Doudrick, *Station Director, Southern Research Station, U.S. Department of Agriculture Forest Service, Asheville, NC 28804.*

I am honored to highlight research and technical assistance the U.S. Department of Agriculture Forest Service Southern Research Station (SRS) and its partners have completed in regard to heirs' property ownership. We have partnered with the Federal Reserve Bank of Atlanta to produce this publication which showcases some of the engagement taking place around this issue.

The SRS represents 13 States extending from Virginia to Texas and Oklahoma. More than 86 percent of the forests in the South are privately owned, and certainly some of these properties are held as heirs' property, although exact estimates are not known. Because heirs' properties may be underutilized from an economic and land management perspective, we suspect that challenges surrounding heirs' property ownership impact these landowners' ability to manage forested land in terms of wildfire, flooding, and forest pest/disease mitigation. High proportions of rural, (often underserved) African Americans live in counties adjacent to national forests in South Carolina, Georgia, Alabama, and Mississippi, but there is relatively little understanding of how these landowners manage their forest lands or how this management may be impacted by heirs' property ownership (Hitchner et al. 2017). Similar questions relate to the impact of heirs' property on forest land management for rural Appalachian landowners (Deaton et al. 2009). One of the Forest Service's primary goals is the conservation of forest lands—"keeping forests as forests." Whether it is private, Federal, or State-owned land, the benefits of a forested ecosystem are invaluable. Forests help to clean our water and air, provide important fish and wildlife habitats, support numerous recreation opportunities, and serve as critical carbon sinks. Resolving heirs' property issues can help landowners to participate in State and Federally-funded programs that encourage adoption of sustainable forest management practices that further these goals.

The Forest Service motto is "Caring for the land and serving people." I like to turn it around and say it starts with people first. We need to care for the people, so they in turn can care for the land. We know that caring for people impacted by heirs' property issues—e.g., those with minimal technical assistance from State or local forestry agencies, or lack of knowledge and access to programs that could assist with more effective long-term land management—will in turn help us all care for the forests we value.

Cassandra Johnson Gaither (SRS Research Social Scientist) and John Schelhas (SRS Research Forester) have been engaged with heirs' property research for a number of years, in collaboration with numerous partners (Schelhas et al. 2017). Besides the partnership with the Federal Reserve Bank of Atlanta, SRS has partnered with the U.S. Endowment for Forestry and Communities (U.S. Endowment), the USDA Natural Resources Conservation Service, Tuskegee University, the University of Georgia, Fort Valley State College, and the Forest Service's Southern Region (Region 8). In collaboration with the U.S. Endowment, the Sustainable Forestry and African American Land Retention Program was launched in 2012. Over the past 7 years, the program has tested across seven States the potential of sustainable forestry practices

to help stabilize African-American land ownership, increase forest health, and build economic assets. The program has been extended, and new projects in additional States have been added. Please take an opportunity to find out more about this program by reading, "The Sustainable Forestry and African American Land Retention Program," in this publication. The study was led by Schelhas, along with Sarah Hitchner (Assistant Research Scientist, University of Georgia) and Alan McGregor (Retired Vice President, U.S. Endowment).

Another study presented in this publication, "Appalachia's "Big White Ghettos": Exploring the Role of Heirs' Property in the Reproduction of Housing Vulnerability," by Johnson Gaither documents the relative lack of improvement value of heirs' parcels, compared to non-heirs' parcels in eastern Kentucky. Heirs' property ownership can impact not only the productivity and management of land, but also the type of loans and housing available for purchase. Most landowners who purchase housing on property classed as heirs' property do so by taking out a personal loan. These investments typically depreciate in value, unlike constructed homes financed with conventional mortgages.

I am pleased that SRS research continues to examine the problems and opportunities associated with heirs' property ownership. I am also pleased to share the introduction of this very important topic with Raphael Bostic, President and CEO of the Federal Reserve Bank of Atlanta. I look forward to our continued partnership.

I will leave you with a quote from Aldo Leopold that I feel summarizes the Forest Service's commitment to people:

> *Who is the land? We are, but no less the meanest flower that blows. Land ecology at the outset discards the fallacious notion that the wild community is one thing, the human community another.*

LITERATURE CITED

Deaton, B.J.; Baxter, J.; Bratt, C.S. 2009. Examining the consequences and character of "heir property". Ecological Economics. 68(8/9): 2344–2353.

Hitchner, S.; Schelhas, J.; Johnson Gaither, C. 2017. "A privilege and a challenge": valuation of heirs' property by African American landowners and implications for forest management in the Southeastern U.S. Small-Scale Forestry. 16(3): 395–417.

Schelhas, J.; Hitchner, S.; Johnson Gaither, C.; Jennings, V. 2017. "Sunshine, sweat, and tears": African-American ties to land and forests in the South. e-Gen. Tech. Rep. SRS-220. Asheville, NC: U.S. Department of Agriculture Forest Service, Southern Research Station. 154 p.

Heirs' Property in the Southeast: A Community Development Perspective

Raphael Bostic, *President and CEO, Federal Reserve Bank of Atlanta, Atlanta, GA 30309.*

Property ownership confers many economic and sociocultural benefits for individuals and families. However, too often those benefits are locked for related co-owners who lack clear title and rely on full agreement from family members on uses of the land. This issue is important for the economies in the footprint of the Federal Reserve Bank of Atlanta (Atlanta Fed[1]), which includes the States of Alabama, Florida, and Georgia and parts of Louisiana, Mississippi, and Tennessee. Thus, on June 15, 2017, to raise awareness and advance work in this area, we hosted "Heirs' Property in the South: Fostering Stable Ownership to Prevent Land Loss and Abandonment," a conference we cosponsored with the U.S. Department of Agriculture Forest Service's Southern Research Station. Many speakers from the event are included in this publication.

The Federal Reserve has a dual mandate of achieving stable prices and maximum employment. As such, we must understand the barriers to inclusive economic growth and respond effectively. One way in which we do so is through the Federal Reserve System's Community Affairs function, which serves to activate the Community Reinvestment Act (CRA) and to monitor and engage low- and moderate-income communities. In this role, the Atlanta Fed primarily serves its constituent States in the Southeast. In tracking a host of issues, including housing, small businesses, community development finance, and workforce development, it has become clear to our institution that heirs' property has a significant impact on families and communities in our footprint. According to recent data compiled by the Atlanta Fed and the University of Georgia's Carl Vinson Institute of Government, as much as 11 percent of residential lots are known to be jointly owned by heirs in counties in the Southeast (Carpenter et al. 2016). However, full and accurate data are hard to come by, and the actual share may be much higher.

What has this meant for landholding, particularly for minorities? As noted by many of the authors in these proceedings, post-slavery, African-American land ownership peaked in 1910 at 15 million acres and then fell dramatically from that point, with land loss often due to heirs' property complications. Whether land owned by heirs is lost through a sale or abandonment, successive generations are unable to reap the benefits of ownership. Through probate, wealthy, landed families may be able to consolidate their holdings; however, heirs that own property as tenants-in-common will more likely see this wealth dissipate.

Research shows that the issue is pervasive among ethnic and racial minority landowners as well as those with lower income and lower wealth (Johnson Gaither 2016, Mitchell 2001). Based on data from the Board of Governors of the Federal Reserve's Survey of Consumer Finances (Dettling et al. 2017), the mean and median net worth of Black families in the United States is <15 percent that of White families. In the United States, Black families are also less likely than White families to be homeowners, a key component of wealth generation.

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[1] The Atlanta Fed is one of 12 regional banks that, along with the Board of Governors, make up the Federal Reserve System. The system is responsible for U.S. monetary policy, supervision and regulation of State-chartered banks that are members of the Fed, and for the payments system, including checking, cash, and electronic payments. Each regional Reserve Bank is also responsible for assessing its member banks' levels of investment in lower income communities as part of the Community Reinvestment Act of 1978, which Congress passed in response to redlining and other discriminatory lending practices.

In the Southeast, we also see lower levels of overall economic mobility, or the ability of children to earn more than their parents, particularly by race (Chetty et al. 2018). Unrealized wealth from property ownership could be used to invest in postsecondary education, a new business venture, or simply to buffer a family from economic shock. Along with access to quality jobs, the savings and financial stability afforded by land ownership can be a building block for economic mobility.

Owners of heirs' property may also be unable to access traditional mortgage financing or business loans due to lack of clear title. This limits the ability to productively use the land for profit, to make improvements for private use, and to sell the land at fair market value. Prior to the CRA and the Fair Housing Act, access to Farmers Home Administration and other government-backed loans was limited for Black landowners. As noted by Bownes and Zabawa in these proceedings, several Federal agencies engaged in documented, purposeful discrimination against African-American farmers. Given past injustices, it is important that heirs gain access to traditional public and private financing, which is subject to oversight and generally carries more favorable terms than alternative lending products.

Lack of investment in heirs' property also affects community vitality. Heirs' property may be abandoned by family members who are unable or even unwilling to maintain the land, which in turn causes safety concerns and reduces the value of surrounding properties and the tax base of a community. Bailey et al. demonstrate a link between heirs' property formation and persistent poverty in the South in their chapter, "Heirs' Property and Persistent Poverty among African Americans in the Southeastern United States." Concentrated poverty has a negative impact on health, safety, and educational outcomes and overall investment in a community.

While much of the work compiled in these proceedings focuses on the demographic Black Belt and other areas of the Southeast, it should be noted that heirs' property affects all populations and regions at some level. It is both an urban and rural phenomenon. Also noteworthy is the high number of heirs' properties in Appalachia and the Texas *colonias*. In addition, fractionation of land in Indian Country is a particular type of heirs' property issue stemming from past Federal policies. My colleague Patrice Kunesh from the Minnesota Fed's Center for Indian Country Development explores this issue in the chapter, "Divided Interests: Growing Complexity of Fractionated Property Rights in Indian Country and Possible Resolutions."

Given the impacts on families and communities in our district and beyond, we at the Atlanta Fed are invested in raising awareness about heirs' property. The first challenge is prevention, or estate planning that provides a stable path for succession and transfer of wealth. A second and equally important challenge is resolving heirs' property issues. To accomplish these goals effectively, we also need comprehensive data and an historical context to understand the scope of the problem. Our June 2017 event brought together a diverse group of stakeholders from academia, public agencies, and nonprofits, among others. It was encouraging to hear about their important work and dedication, including ideas for legal reform, new research methods, and partnerships. These proceedings compile many of these perspectives in order to advance understanding and innovation in this field.

LITERATURE CITED

Carpenter, A.; Jones, S.; Pippin, J.S. 2016. Understanding heirs' properties in the Southeast. Partners update. https://www.frbatlanta.org/community-development/publications/partners-update/2016/02/160419-understanding-heirs-properties-in-southeast.aspx. [Date last accessed: May 7, 2019].

Chetty, R.; Hendren, N.; Jones, M.R.; Porter, S.R. 2018. Race and economic opportunity in the United States: an intergenerational perspective. http://www.nber.org/papers/w24441.pdf. [Date last accessed: May 7, 2019].

Dettling, L.J.; Hsu, J.W.; Jacobs, L. [et al.]. 2017. Recent trends in wealth-holding by race and ethnicity: evidence from the Survey of Consumer Finances. https://doi.org/10.17016/2380-7172.2083 [Date last accessed: May 7, 2019].

Johnson Gaither, C. 2016. "Have not our weary feet come to the place for which our fathers sighed?": heirs' property in the Southern United States. e-Gen Tech. Rep. SRS-216. Asheville, NC: U.S. Department of Agriculture Forest Service, Southern Research Station. https://www.srs.fs.usda.gov/pubs/gtr/gtr_srs216.pdf. [Date last accessed: May 7, 2019].

Mitchell, T.W. 2001. From Reconstruction to deconstruction: undermining Black ownership, political independence, and community through partition sales of tenancy in common property. Legal Studies. 95(2): 505–580.

Heirs' Property Facts:
What the Data Reveal

BLACK BELT STUDIES

Learning about the Land: What Can Tax Appraisal Data Tell Us About Heirs' Properties?

Shana Jones and J. Scott Pippin

Note: *This essay includes findings from "Identifying Potential Heirs' Properties in the Southeastern United States: A New GIS Methodology Utilizing Mass Appraisal Data," a report the authors co-authored with Dr. Cassandra Johnson Gaither, U.S. Department of Agriculture Forest Service, Southern Research Station. That report was supported by the Forest Service as part of a cooperative agreement between the agency and the Carl Vinson Institute of Government at the University of Georgia (15-CA-11330144-023).*

Although the number of uses for geographic information has exploded in recent years, resulting in what the National Geographic Society calls the Geospatial Revolution, facts about land and its ownership can be remarkably difficult to uncover. Figuring out who owns what can be a very tall order, even in the context of one parcel and one family. For local governments, policymakers, and researchers, having good information about real property ownership on a community, State, or regional scale can be even more challenging, often seemingly impossible.[1] These difficulties are exacerbated by the fact that, historically, data concerning land title did not exist in an available digital format. Gathering information about land titles required a trip to the "deed room" in a local county courthouse as well as a time-consuming and laborious title search experience.

Advances in the development and availability of digitized property data is changing the way people look at property, however. In this essay, we describe a recent research project we conducted in partnership with the U.S. Department of Agriculture Forest Service's Southern Research Station, designed to improve information about property ownership on a broad and regionally comprehensive scale. This project used Computer Assisted Mass Appraisal (CAMA) data to learn more about heirs' property from the growing body of digital property data. Appraising individual parcels on a case-by-case basis is an expensive and time-intensive process. Consequently, the use of mass appraisal methodologies and standardized procedures for valuing multiple parcels has grown over the past 30–40 years, especially as computer processing capacity has increased. Most jurisdictions today use fully automated mass appraisal processes to develop property tax assessments.

Our project focused on "heirs' properties," which generally refers to a specific yet widespread title issue where a landowner lacks "good title" and cannot demonstrate her ownership of the property with a recorded deed, and which

[1] Land Parcel Data: A Vision for the Future, *National Research Council*, National Academy of Sciences, xi, (2007) (observing that a nationally integrated set of land parcel databases remains out of reach despite significant technological advances). *National Spatial Data Infrastructure (NSDI) Report Card*, Coalition of Geospatial Organizations, 16–17 (2015).

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thus causes problems in managing and maintaining the property.[2] Heirs' properties create barriers for landowners to productively use their land and increases owners' vulnerability to land loss, while also creating potential issues of blight and decreasing property values for the surrounding community. While the problem is significant, estimating the prevalence of heirs' properties is very difficult. Typical efforts to estimate heirs' properties use volunteers with legal backgrounds to review tax parcel and land record data, a time-intensive and expensive process because much of the information contained on land titles is not digitized.[3] Our project built upon such "hands-on" approaches by using CAMA data as an alternative to automate and refine heirs' property identification. Using CAMA data also resulted in another advantage: it allowed the property data to be easily integrated with other digital data to provide a more complete analysis of the conditions surrounding heirs' property that had not been possible.[4] We overlaid socioeconomic and demographic data with parcel data found in the CAMA files to explore what these data sources could reveal about the heirs' property phenomenon. We found that these types of spatially oriented geographic data provide a relatively simple means to rapidly assess the potential extent of heirs' property in a jurisdiction.

Our findings from Georgia show the promise of this approach. We first used CAMA data to geospatially analyze five counties that included high numbers of individuals with demographic characteristics identified by researchers as likely to contain high numbers of heirs' properties. We then used indicators, modeled on groundbreaking work conducted by the nonprofit public interest group Georgia Appleseed and discussed in more detail below, within this dataset to identify properties more likely to be heirs' property.[5] Our analysis found, on average, 19 percent of all parcels in this five-county study area were potential heirs' property, totaling 34,463 acres and with an assessed value of approximately $766 million. While this amount is strikingly significant, the actual value is almost certainly greater, as assessed values for property are often lower than market values. We then compared these results with five additional counties in Georgia having fewer demographic characteristics indicating heirs' property ownership, compared to our initial study area. In these counties, an average of 14 percent of parcels were identified as potential heirs' properties, which was 5 percentage points lower than those from the initial test group. Even though a lower percentage of potential heirs' property parcels were identified in the comparison group of counties, however, the value of the properties was substantially higher, with a cumulative value of $1.38 billion. This is likely due to higher levels of development in these counties and higher property values. In short, a 10-county analysis revealed approximately $2.1 billion in assessed value of potential heirs' properties. This value represents a tremendous amount of potential wealth that is not utilized for wealth generation because owners cannot leverage these assets to access capital or qualify government funding assistance.

To our knowledge, moreover, we know of no other attempt to connect demographic indicators of heirs' property ownership with corresponding census and CAMA data in order to spatially analyze areas at the county level to assess likely heirs' properties. Notably, our initial analysis of 10 Georgia counties suggests that higher levels of educational attainment and lower poverty levels may be associated with lower levels of heirs' properties in areas with high numbers of a minority population—an often-

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[2] As the term "heirs' property" suggests, title issues can arise when property is transferred, usually following an owner's death, in a way that creates multiple co-owners of the property who have co-equal use of the entire property. When title is transferred in this way, what is known as a "tenancy-in-common" is formed between those who inherit title to the property. However, the name recorded on the deed remains that of the deceased individual. Heirs' property is distinguished from other tenancy-in-common relationships in that those who possess real property through State laws of intestacy find they are "locked out" of the potential wealth and benefits that the property could provide for one crucial reason: they cannot prove they own it outright; that is, they cannot show "good title." Therefore, heirs' property is defined by the problems that ownership structure causes the owners. *See* Thomas W. Mitchell, *Reforming Property Law to Address Devastating Land Loss*, 66 Ala. L. Rev. 1, 9 (2014). Tenancy-in-common forms of ownership are legal. In a tenancy-in-common ownership structure, each owner owns all of the property equally, with each having equal rights of possession of it and responsibility for it. Absent some sort of management agreement, unanimous consent of all of the owners is required to make any decisions regarding the use or management of the property.

[3] Our project was modeled on research conducted by Dr. Janice Dyer, a then-PhD student studying rural sociology at Auburn University. *See* Janice F. Dyer et al., *Ownership Characteristics of Heir Property in a Black Belt County: A Quantitative Approach*, 24(2) Southern Rural Sociology 192, 201 (2009).

[4] For example, integrating CAMA data identifying potential heirs' properties with flooding data could reveal insights about vulnerable properties at risk from flood. Low income individuals often live in low-lying areas. *See* Shannon Van Zandt et al., *Mapping Social Vulnerability to Enhance Housing and Neighborhood Resilience*, 22 Housing Policy Debate 2012, 29–55.

[5] To improve understanding of the prevalence and value of heirs' properties, the nonprofit public interest group Georgia Appleseed developed a research methodology designed to "identify potential heirs property with a degree of reasonable certainty and estimate the acreage and fair market value of heirs property in Georgia." *See* Georgia Appleseed Center for Law and Justice, Heir Property in Georgia (February 6, 2015). This was accomplished by using volunteers to review tax parcel and land record data, modeled on research conducted by Dr. Janice Dyer, a then-PhD student studying rural sociology at Auburn University.

cited indicator of heirs' property ownership.[6] Certainly, a great deal of work remains to be done to verify and refine our methods. Our complete results for Georgia are found in tables 1 and 2 below.

WHAT ARE CAMA DATA, AND WHAT ARE THEIR ADVANTAGES?

Although availability of geographic information has increased significantly over the past 20 years, land parcel data remain disaggregated and nonstandard in the United States. This is so despite the critical importance of such data to the local, State, and national economy. The information contained in deed records outlines the very rights, interests, and values of private property—and, indeed, serves as the foundation for the Nation's financial, legal, and real estate systems.

Given these land title data issues, one premise underlying our project is that local mass appraisal data have the potential to serve as a good source of information, as such data sources are digitally accessible and include many of the indicators associated with heirs' property identified by researchers such as parcel transfer dates, preferential tax status, and the presence of mobile homes. Mass appraisal is conducted by county appraisers and is "the process of valuing a universe of properties as of a given date using standard methodology, employing common data, and allowing for statistical testing."[7] The data used in the mass evaluation process are the CAMA data.[8] CAMA data are often integrated with other local GIS data so that the property features described in the data can be mapped.[9] This allows the appraisal model to take into account spatial data—such as water frontage—that affect property value.[10] Many local governments use CAMA data because taxes assessed on real property constitute a large portion of their revenue. Assessing and collecting these taxes require a great deal of information about the condition of properties within their jurisdictions to accurately appraise the value.[11]

USING CAMA DATA TO IDENTIFY POTENTIAL HEIRS' PROPERTIES

Developing indicators of heirs' property using CAMA data was challenging because heirs' property ownership has generally been discussed in the academic literature as a characteristic of owners rather than the properties. In other words, researchers have focused on the characteristics of the *people* who find themselves owning heirs' property—i.e., race, income, educational attainment—instead of the general *property characteristics* of the heirs' property itself. Land parcel data generally do not include demographic information. This insight also reinforced the potential of our CAMA approach, as it provides an opportunity to expand the understanding of the characteristics of the heirs' properties themselves—their average size, housing type, average value, environmental makeup, etc.—that have more consistency and greater predictive value compared to attempting to analyze data about people and families. Property characteristics are much more fixed and persistent while the human component changes over time and with successive generations.

More research is needed to validate the characteristics of heirs' property parcels themselves as opposed to their owners. The indicators we selected for our CAMA analysis are factors that are intended to screen out properties that are *unlikely* to be heirs' property—properties that can be eliminated because we are confident that they have "good title" based on the parcel data available. Properties that remain are those most likely to be heirs' property, which we refer to as "potential heirs' property."[12] We identified three major indicators of heirs' property from digital parcel

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[6] Much of the scholarship to date has focused on heirs' property as a primarily African-American phenomenon, often specifically as an outgrowth of Jim Crow-era segregation and disenfranchisement. *See, e.g.,* Unif. Partition of Heirs' prop. Act, Prefactory Note at 5 (2010) (citing scholarship on Black land loss); Janice F. Dyer et al., *Ownership Characteristics of Heir Property in a Black Belt County: A Quantitative Approach,* 24(2) Southern Rural Sociology 192, 201 (2009); Jess Gilbert et al., *The Loss and Persistence of Black-Owned Farms and Farmland: A Review of the Research Literature and its Implications*, 18(2) Southern Rural Sociology 1–30 (2002). Scholars have also documented non-commodifiable valuations of land and land ownership by African Americans including collective land tenure, economic self-sufficiency, ancestral homeplaces, and epicenters of cultural and spiritual expressions. *See* Phyliss Craig-Taylor, *Through a Colored Looking Glass: A View of Judicial Partition, Family Land Loss, and Rule Setting,* 78 Wash. U. L. Rev. 737 (2000); *Heir Property: Legal and Cultural Dimensions of Collective Landownership* (Alabama Agricultural Experiment Station May 2007).

[7] Uniform Standards of Professional Appraisal Practice, U-3 (2014–15).

[8] *Id.* at 307–08.

[9] David McIlhatton, Michael McCord, Peadar Davis, and Martin Haran. Ch. 15 *Geographic Information Systems and the Importance of Location: Integrating Property and Place for Better Informed Decision Making* at 340, in William J. McCluskey, Gary C. Cornia, and Lawrence C. Walters, A Primer on Property Tax: Administration and Policy (2013 Wiley-Blackwell).

[10] *Id.*

[11] Riël Franzen and William J. McCluskey, Ch. 2. *Value-Based Approaches to Property Evaluation* 59, in William J. McCluskey, Gary C. Cornia, and Lawrence C. Walters, A Primer on Property Tax: Administration and Policy (2013 Wiley-Blackwell).

[12] One avenue for continued research in this area will focus on on-the-ground case studies to establish a general number of heirs' properties among the potential heirs' properties. If a reliable rate can be established, the CAMA-based methods piloted here will have far greater predictive value.

Table 1—Results of 10-county heirs' property estimation analysis in Georgia

County	Population	Total parcel count	Number of potential heirs' property parcels	Percent of parcels with potential heirs' property	Value of potential heirs' property parcelsa	Acreage of potential heirs' property	County acreage	Percent of county acreage in potential heirs' property
Heirs' property cluster counties								
Calhoun	6,463	3,383	398	11.8	$13,309,474	2,078	178,734	1.1
Clay	3,102	3,105	651	21.0	$33,637,362	5,618	137,718	4.1
Dougherty	92,407	37,849	9,386	24.8	$648,643,199	10,192	195,214	5.2
Taliaferro	1,693	2,261	375	16.6	$2,363,320	2,941	121,276	2.4
Telfair	16,518	8,562	1,716	20.0	$67,855,196	13,634	274,591	5.0
TOTAL					**$765,808,551**	**34,463**	**907,533**	**3.8**
Comparison counties								
Bibb	153,905	68,861	7,466	10.8	$523,207,628	9,374	137,988	6.8
Clarke	120,938	41,872	4,630	11.1	$565,129,450	4,458	60,157	7.4
Evans	10,898	6,528	1,059	16.2	$57,351,608	7,715	101,040	7.6
Jasper	13,432	10,034	1,316	13.1	$64,317,222	3,275	257,542	1.3
McIntosh	14,214	12,858	2,433	18.9	$173,136,902	13,298	242,560	5.5
TOTAL					**$1,383,142,810**	**38,120**	**799,287**	**4.8**
10-COUNTY TOTAL					**$2,148,951,361**	**72,583**	1,706,820	4.3

[a] Value is based on the tax-appraised value reported in the CAMA data.

Table 2—County-level demographic indicators associated with heirs' property ownership

County	Population	Percent of population living in poverty	Per capita income	Percent of population with low education	Percent minority population	Percent of parcels with potential heirs' property
Heirs' property cluster counties						
Calhoun	6,463	28.8	$12,452	31.7	66.4	**11.8**
Clay	3,102	34.2	$13,353	24.9	62.7	**21.0**
Dougherty	92,407	28.9	$19,210	19.3	71.1	**24.8**
Taliaferro	1,693	34.4	$13,955	41.6	63.6	**16.6**
Telfair	16,518	31.3	$13,420	31.1	48.9	**20.0**
Comparison counties						
Bibb	153,905	22.4	$21,436	18.8	57.9	**10.8**
Clarke	120,938	33.5	$19,839	15.7	42.9	**11.1**
Evans	10,898	21.2	$19,072	26.7	43.4	**16.2**
Jasper	13,432	19.1	$20,263	21.9	27.4	**13.1**
McIntosh	14,214	16.6	$20,964	21.7	39.2	**18.9**

records that screen out properties with good title and flag properties that are likely to be heirs' property:

- **Owned by "natural people"**—We eliminated all parcels titled in any way other than to a person by name, i.e., we eliminated businesses, governments, schools, churches, family trusts, and other organizations.[13]
- **Parcels with no preferential tax status**—Land use policies such as the conservation of agricultural, historic, or environmentally sensitive areas are often promoted through preferential taxation. Qualifying for preferential tax status requires a landowner to apply and make a claim regarding their title to the property. Thus parcels with preferential tax status are unlikely to be heirs' properties, and we eliminated all parcels indicating preferential tax status.
- **Parcels with older transfer date**—The longer it has been since a property has changed hands, the likelier it is that the property is an heirs' property. Put another way, an individual listed as the most recent owner on a parcel whose most recent transfer date is 1930 is unlikely to still be living today. For the purposes of our analysis, we anticipated that parcels that have not been transferred in more than 30 years have a substantially greater likelihood of being heirs' properties.

Additional property characteristics in the CAMA data may identify potential heirs' property more directly. For instance, taxing authorities may know that the property is likely to be an heirs' property because the CAMA data may show "estate of" or "heirs of" in the owner name or otherwise note this kind of personal knowledge about the property. Other notations of "et al." or "etc." in the owner name may also indicate an heirs' property. Unfortunately, these notations are not commonly used by appraisers, and conducting research to identify heirs' property owners is not part of standardized appraisal practice. As such, where they do exist they likely do not capture all of the heirs' property in a community, and because CAMA datasets are maintained locally, there is no uniformity as to whether these characteristics are noted even where communities use the same data format.

The following characteristics—what we term "positive factors"—are often correlated with potential heirs' properties, but they were not directly used in the screening analysis because their inclusion in CAMA data is not uniform across jurisdictions. Research suggests that high rates of mobile (and vacant) homes are indicative of heirs' property.[14] This factor may stem from the fact that bank financing may not be available due to the lack of good title to the land, and mobile homes can often be financed without any collateral beyond the home itself. When multiple mobile homes are indicated to be present on a parcel, such information added weight to properties identified as potential heirs' properties during our screening. Additionally, research suggests that tax assessor data indicating that the purported owner of a property receives tax notices at an out-of-State mailing address is indicative of heirs' property.[15] Having two different mailing addresses increases the likelihood of an absentee owner of the property, particularly in jurisdictions that do not have a large number of second homes.

CONCLUSIONS AND FUTURE RESEARCH

CAMA data can potentially be used to quickly assess the potential number of heirs' property parcels. Their use can help develop a more comprehensive picture of the concentrations of heirs' property in the identified jurisdictions or geographies than was previously feasible due to the time and expense of manual methods used in previous efforts to identify heirs' property. This methodology is relatively uniform and replicable, at least among communities that use similar CAMA data formats, allowing one to compare numbers of heirs' properties across jurisdictions, providing a basis for testing assumptions about heirs' properties. It also allows us to begin to understand how characteristics of the property—as opposed to the owner—may indicate increased likelihood of heirs' property ownership.

Additional work is needed to realize the potential value of CAMA data in assessing the extent and impact of the heirs' property phenomenon. This project demonstrated the practicality of using CAMA to perform spatial assessments of heirs' property, but to date we lack sufficient data to serve as a control to evaluate the effectiveness of different CAMA-based methodologies. To further develop this process and effectively deploy it to help communities understand the impacts of heirs' property and to develop plans and solutions, these control data need to be developed.

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[13] Although it is possible that organizations such as churches or businesses may have title issues or even be located on heirs' property, for the purposes of this analysis, we are excluding such parcels to focus on developing an assessment that captures the likelihood of individual property owners having heirs' properties.

[14] Janice F. Dyer, *Statutory Impacts of Heir Properties: An Examination of Appellate and Macon County Court Cases*, Paper presented at the 66th Annual Professional Agricultural Workers Conference, Tuskegee University (Dec. 2008).

[15] Dyer, *Ownership Characteristics, supra* note 4 at 202; Georgia Appleseed Center for Law and Justice, Unlocking Heir Property Ownership: Assessing the Impact on Low and Mid-Income Georgians and Their Communities, 10 (2013).

Verifying this methodology with a control dataset would provide a tremendous value to heirs' property researchers, advocates for heirs' property reforms, and legal and technical assistance providers. Using geospatially referenced data allows for new connections and visualizations of diverse data sources, making it possible to reveal new insights and more easily develop new data that can be used to assess the extent of this problem and analyze efforts to address this situation. Great potential likely exists, for example, in connecting our analysis to historic and projected population trends, as both declining and changing demographics appear to be possible indicators of heirs' property. Similarly, this type of heirs' property analysis integrated with certain programmatic data could help those working to resolve this issue and potentially better address affordable housing issues, natural resource conservation, and land loss. Such potential data sources could include housing data from the U.S. Department of Housing and Urban Development (HUD), claims data from the Federal Emergency Management Agency (FEMA), applications for assistance from the U.S. Department of Agriculture (USDA), data from the Environmental Protection Agency (EPA), mortgage data, and other types of data collected by Federal and State agencies.

In short, a great deal of data exists that could tell us more about heirs' property. While every parcel, family, and community will have different and distinct stories to tell, the availability of digitized property data is increasing in a way that has great potential to deepen our understanding of the heirs' property phenomenon more generally. Learning more about the land and its ownership is possible at scales that may not have been feasible until now.

Heirs' Property and Persistent Poverty among African Americans in the Southeastern United States

Conner Bailey, Robert Zabawa, Janice Dyer, Becky Barlow, and Ntam Baharanyi

Abstract—Historically, relatively few African Americans in the Southeastern United States (the "South") wrote wills; there were few African-American lawyers, and most White lawyers of the courthouse gang did not inspire trust. As a result, upon death, property in the form of homes and land was distributed as undivided shares among surviving kin. As generation followed generation, title to such property became ambiguous or "clouded," sometimes with scores or even hundreds of claimants. This phenomenon, known as heirs' property, is an overlooked contributing factor to persistent poverty among African Americans in the South. We identify three factors that we believe connect heirs' property and persistent poverty: (1) insecurity of ownership; (2) disincentives to make improvements that increase productive use and value of heirs' property; and (3) the absence of collateral value of property. Using secondary data, we conservatively estimate over 1.6 million acres of heirs' property having a value of $6.6 billion in counties of the demographically defined Black Belt of the South. We discuss the need for additional research and for policy changes that would make it possible for heirs' property owners to access programs designed to improve housing conditions and productivity of farmland and timberland.

Keywords: African Americans, Black Belt, heirs' property, land, persistent poverty, South.

INTRODUCTION

Ownership of land represents many things to African Americans in the rural Southeastern United States (U.S. "South"). For farmers, ranchers, and forest landowners, land is a productive asset that generates income and is a storehouse of wealth (Geisler 1995, Zabawa 1991). Beyond its economic importance, and because of their unique struggle to obtain and retain land in the American South, for African Americans, ownership of land provides personal security and a sense of independence and satisfaction (Gilbert et al. 2002, King et al. 2018, Nelson 1979, Salamon 1979). Ownership and management of land affects employment and income at the individual level and can promote or impede economic and community development (Deininger and Kirk 2003, Dudenhefer 1993, Nelson 1979). Land ownership translates into political power while landlessness results in vulnerability and marginality (Copeland 2013, Gaventa 1998, Raper 1936). In the rural South, African-American landowners played a key role in the Civil Rights movement because they had a measure of personal security that sharecroppers did not have (Shimkin et al. 1978). "Property ownership was more than a mere status symbol for African Americans. Land ownership represented independence, self-sufficiency and served as evidence that some African Americans possessed the will to overcome economic, legal obstacles, and even the threat of violence to become property owners" (Copeland 2013: 661).

By 1910, African Americans had accumulated a high of almost 16 million acres of land held in full ownership, a figure that reached a low of 2.3 million acres by 1992 (Gilbert et al. 2002, USDA 1992, USDC 1920). The most recent U.S. Department of Agriculture (USDA) data show African-American farmers owned 3.9 million acres in 2017 (USDA 2019). The causes of this decline are many but include vulnerabilities associated with heirs' property (Mitchell 2005, 2014). Heirs' property refers to land and other real property passed down across generations in the absence of a probated will. Heirs' property is a

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multi-generational issue that can span decades or more and include potentially hundreds of relatives. Schulman et al. (1985: 41) noted that heirs' property has become "the traditional form of farmland ownership" among African Americans and is an issue likely to persist into the future given that many African Americans still do not write wills (Zabawa and Baharanyi 1992, Zabawa et al. 1994).

There has been considerable research on the legal complications and struggles of families dealing with heirs' property, but there has been almost no research on the connection between heirs' property and persistent poverty. The most recent USDA Economic Research Service definition of persistent poverty identifies those counties where 20 percent or more of all residents are considered poor through the 1980, 1990, and 2000 census counts plus the 2007–2011 American Community Survey (USDA ERS 2018). The contribution of this paper is to explain why heirs' property represents an important causal factor in the persistence of poverty among African Americans in counties of the demographically defined Black Belt South. We use available data to estimate the extent in acres and value in dollars of heirs' property in that region. We apply the concept of "dead capital" to heirs' property because title to such property is clouded and therefore cannot be leveraged to generate additional capital. Dead capital provides a useful and broadly heuristic framework for a detailed examination of those attributes of heirs' property that are specifically linked as causal factors to persistent poverty. We point out needs for future research to provide a stronger empirical foundation to document this connection.

PERSISTENT POVERTY IN THE BLACK BELT SOUTH

The Black Belt of the South stretches from the coastal counties of Virginia south through Georgia and thence westward along the Coastal Plain as far as eastern Texas, as well as north up the Mississippi River as far as Missouri. Booker T. Washington defined the Black Belt of the South as those counties where African Americans outnumbered Whites (Washington 1901: 56), a definition echoed by Raper (1936). More recently, Wimberley and Morris (1997) mapped the Black Belt by distinguishing counties where 12 percent or more of the population was African American (12 percent being the national average at the time of their study). In 2010, African Americans made up 12.6 percent of the national population, 55 percent of whom lived in the South (Rastogi et al. 2011). For present purposes, we will define the Black Belt South as those counties in 10 States (Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia) where African Americans make up 25 percent or more of the population, roughly double the U.S. average (fig. 1). Out of a total 848 counties, there are 365 Black Belt counties in these 10 States.

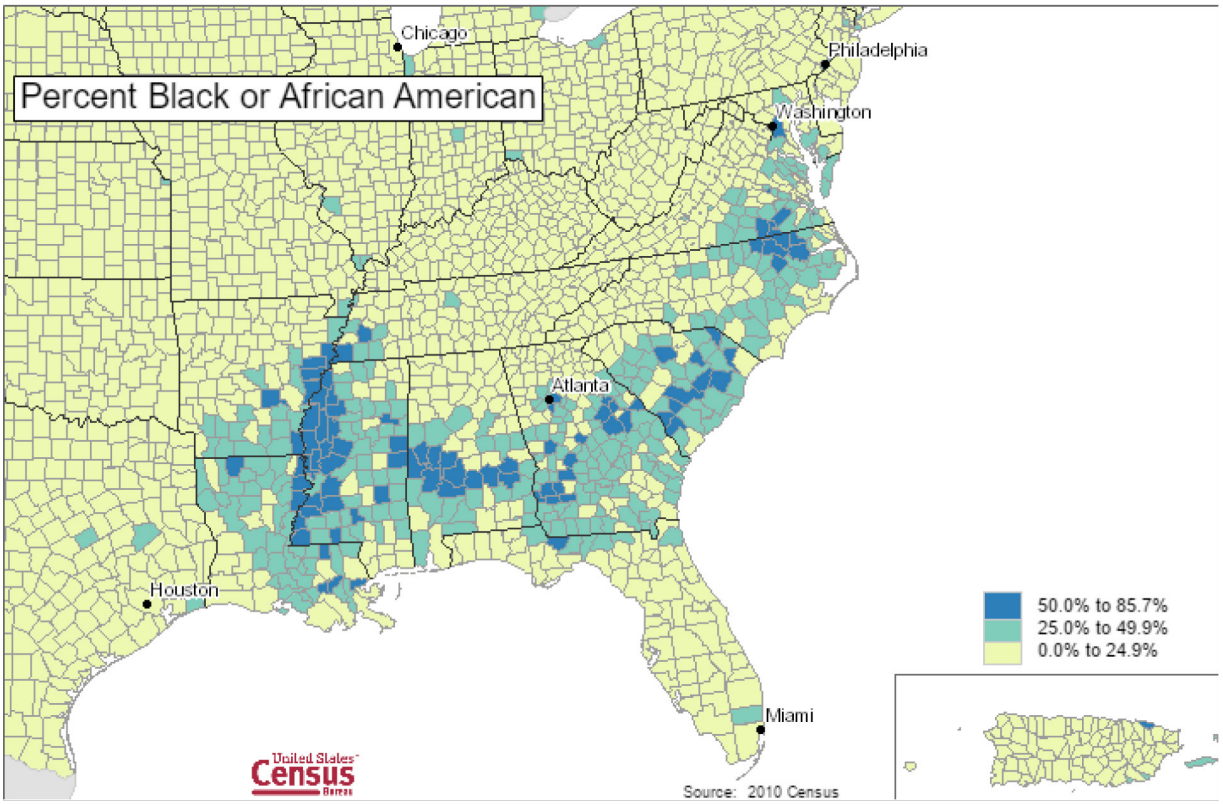

Figure 1—Percent of population that is Black or African American by county, 2010.

In 2014, within all non-metropolitan counties of the United States, African Americans had the Nation's highest poverty rate of any racial or ethnic group (36.9 percent), and virtually all of this poverty was located within the Black Belt (USDA ERS 2016). The Black Belt is also home to most of the Nation's 472 persistently poor counties. Running from Virginia to Texas, 323 of those counties (66.3 percent) are considered persistently poor (USDA ERS 2016). Persistent rural poverty in the Black Belt stems from a complex set of problems rooted in a history of slavery and racial discrimination, the vestiges of which continue to influence life today (Duncan 2014, King et al. 2018, Litwack 1998). Heirs' property is a phenomenon deeply rooted in this history and is an enduring legacy of a legal and political system built around racial and economic oppression.

HEIRS' PROPERTY AS DEAD CAPITAL

Historically, African-American property owners' decisions not to write wills are understandable in the context of local "courthouse gangs" of White lawyers who were not trusted (see Dyer 2007: 20–22). This sense of distrust was captured by a political leader in south Alabama, who described "vulture-like white people [who], through various dubious legal schemes, too often actually steal land from unknowing blacks …" (Figures 1971: B-7). There are few African-American lawyers working in the rural South even today, and White courthouse gangs are still viewed with understandable suspicion (Duncan 2014; Dyer and Bailey 2008; USDA 2007, 2008).[1]

In the absence of a probated will, each State regulates how property is passed to a decedent's heirs, who become tenants-in-common with undivided shares of the property as a whole. With each passing generation that dies without a will, the number of co-owners increases. After several generations, there could be hundreds of owners, many of whom may have little if any connection to the property while others may have strong emotional ties to the property. Family members who have moved away and may have lost contact with the rest of the family still retain ownership rights. Title to heirs' property is considered to be "clouded" because no one person or clearly defined set of persons has clear title and legal decision-making authority over the property. This greatly complicates decision making, frequently leads to disputes among kin, and is the underlying reason why banks, title companies, and others consider title to heirs' property to be clouded title.

In contemporary capitalist societies, clear and secure property rights provide an important basis for accumulation and intergenerational transfer of wealth (Kotlikoff and Summers 1981). Land is a productive resource that can be used to generate wealth, provides personal and economic security, and allows for the pursuit of personal happiness (Geisler 1995). Because title to heirs' property is unclear, it has little if any value as collateral and so cannot be used to establish businesses, fund a university education, or leverage other investments. Decisions on repairing a home, improving the productivity of farmland, or replanting timberland all are complicated by the difficulty of getting all heirs to agree and contribute towards such investments. Heirs' property represents a serious constraint to the accumulation and intergenerational transfer of wealth.

DeSoto (2000) coined the term "dead capital" to describe property lacking clear and legally enforceable title and the inability to leverage such property to generate wealth and income. DeSoto developed the dead capital concept to explain underdevelopment in non-industrialized nations, and there are critics who challenge the appropriateness of extending private property rights from industrial to non-industrialized settings (Bromley 2008). Deaton (2005) has applied the concept of dead capital to the constraints affecting the ability of heirs' property owners in the United States to accumulate and transfer wealth across generations. Acknowledging the appropriateness of Bromley's critique, we believe this use of the dead capital concept is appropriate and heuristically useful in understanding how heirs' property contributes to persistent poverty in the Black Belt South.

MILLIONS OF ACRES, BILLIONS OF DOLLARS

In this section, we provide an estimate of total acres and economic value of heirs' property owned by African Americans in the demographically defined Black Belt counties of the South. Obtaining data on the extent and value of heirs' property is a serious challenge which involves digging through both digital and non-digital records from individual county courthouses. Researchers with the Federal Reserve Bank of Atlanta note that "the difficulty in identifying the scope of the problem lies in the inconsistent methods of data collection and reporting among county tax assessors" (Carpenter et al. 2016). Even where land ownership data are available electronically, relying solely on digital data is problematic because there is no standard nomenclature used for denoting the presence of heirs' property. Dyer et al. (2009) found that cross-referencing electronic data with paper records provided the most reliable method of identifying heirs' property. Such an approach is extremely laborious, however. The

[1] The history of race relations is central to understanding heirs' property in the South, but it is important to note that other marginalized populations in the United States, including Whites in Appalachia, Hispanics in the Southwest, and Native Americans in the West, also have had limited access to the legal system and share with African Americans of the South the vulnerabilities and constraints of heirs' property (Bobroff 2001, Deaton 2005, Sledd 2005). This suggests that economic and political forces, and not just racial prejudice, are at play.

absence of quality data on the extent and value in dollars of heirs' property makes it difficult to argue effectively for legal and policy changes that would benefit heirs' property owners or the larger rural economy of the Black Belt South (Mitchell 2005).

Two early studies of heirs' property made an effort to quantify the extent of heirs' property for African Americans in the South. Based on a study of 10 counties in five States (Alabama, Georgia, Mississippi, North Carolina, and South Carolina), Graber (1978) estimated one-third of all land owned by African Americans was held as heirs' property. The Emergency Land Fund (ELF 1980) used a team of researchers with a clearly articulated research plan in selected counties of Alabama, Louisiana, Mississippi, South Carolina, and Tennessee and found that African Americans in those States owned 9.1 million acres; of this total, 3.8 million acres (41 percent) were held as heirs' property. The USDA (2007) conducted a study in one county in eastern Arkansas and found that 40 percent of all land owned by African Americans was heirs' property.

Other studies on heirs' property help give us a sense that heirs' property is widespread (Johnson Gaither 2016). Rivers (2007) reported that 17,000 acres of Berkeley County, SC, was held as heirs' property, representing 2.2 percent of the county total. The Southern Coalition for Social Justice (2009) reported that heirs' property made up 2 percent of the land in Orange County, NC. A 2011 study by the Center for Heirs' Property Preservation cited in Johnson Gaither (2016) identified 41,000 acres in six coastal counties of South Carolina, representing 1 percent of total land. Data from these counties in North and South Carolina suggest that, on average, 2 percent of the land is held as heirs' property.

In table 1, we present data from 12 counties that provide number of acres and appraised value of heirs' property based on county tax records. The 12 counties include five

Table 1—Heirs' property in 12 counties of Georgia, Alabama, and North Carolina

Counties	Setting	Population, 2017	Population density (*sq. mi.*)	African American, 2016 (*percent*)	Heirs' property (*acres*)	Land in heirs' property (*percent*)	Value of all heirs' property (*$ million*)	Value per acre ($)
Chatham, GA	Metro, coastal	290,501	622	39.8	923	0.3	22.3	24,176
Chattooga, GA	Rural	24,770	83	10.7	271	0.7	0.8	3,024
Dougherty, GA	Urban	89,502	288	68.5	1,551	.01	8.9	5,736
Evans, GA	Rural	10,775	60	29.5	93	0.9	0.4	4,150
McIntosh, GA	Metro, coastal	14,106	34	35.1	2,377	0.1	26.2	11,039
Macon, AL	Rural	18,755	35	82.1	15,971	4.1	44.3	2,771
Calhoun, AL	Urban	114,728	196	20.5	4,468	1.1	30.4	6,806
Pickens, AL	Rural	20,176	22	41.8	6,519	1.1	13.4	2,059
Wilcox, AL	Rural	10,719	12	71.9	8,064	2.8	16.4	2,036
Wake, NC	Metro	1,072,203	1,251	20.6	8,713	1.6	454.9	52,207
Orange, NC	Metro	144,946	363	11.5	5,623	2.2	34.9	6,201
Durham, NC	Metro	311,640	183	37.6	752	0.4	16.0	21,318
Totals					55,325		668.9	
Totals, Black Belt					36,250		147.9	

Sources: Data for the five Georgia counties were found in Georgia Appleseed (2013). Data for Macon County are from Dyer et al. (2009). Data for Calhoun and Pickens Counties are from Alabama Appleseed (2009a, 2009b). Data for Wilcox County are from Patterson (2018). Data for Wake County are from Bartels (2012). Data from Orange County are from Southern Coalition for Social Justice (2009). Data from Durham County are from Sean Mason.[1] Demographic data are from U.S. Census Bureau (2018).

[1] Personal communication. 2018. S. Mason, Graduate Student, Duke University, Durham, NC 27708.

from Georgia, four from Alabama, and three from North Carolina. Eight of 12 counties fit within our definition of the demographically defined Black Belt (over 25 percent African-American). The counties include a mix of rural (five), urban (two), and metropolitan (five) settings with populations ranging from under 11,000 to over 1 million. Population size and density influence appraised values which range from $2,000 to over $52,000 per acre. Data from these 12 counties were collected for studies conducted during the period 2009–2018.

The most detailed and carefully articulated study in terms of research methodology was that of Dyer et al. (2009) in Macon County, AL. This study began with an examination of electronic tax rolls and then extended the search to include archival research, expanding the number of heirs' property parcels. Heirs' property in Macon County totaled nearly 16,000 acres of land representing 4 percent of the county with an appraised value of $44.3 million. Data for the other three Alabama counties (Calhoun, Pickens, and Wilcox) relied exclusively on electronic tax records, which included notations indicating that parcels were heirs' property. Heirs' property in these three counties represented, on average, 1.7 percent of all land. On average, per-acre appraised value of heirs' property for the three rural counties (Macon, Pickens, and Wilcox) was approximately $2,300, less than half the $6,800 values found in urban Calhoun County.

Data for the five Georgia counties come from a Georgia Appleseed (2013) study conducted by real estate lawyers and are based on examination of electronic tax records. Heirs' property accounted for an average of only 0.4 percent of land in these five counties, but the average values per acre were higher than in Alabama. Most noticeable among the Georgia counties are the high appraised values for the two coastal metropolitan counties.

Data for three metropolitan counties in North Carolina (Wake, Orange, and Durham) also are based on electronic tax records and show that appraised values of heirs' property can be quite high, as in the case of Wake County which includes the city of Raleigh. On average, 1.4 percent of these three North Carolina counties are owned as heirs' property.

In these 12 counties, a total of 55,325 acres with an appraised value of $668.9 million are owned as heirs' property. When we focus only on the eight demographically defined Black Belt counties, the totals are 36,250 acres with an appraised value of $147.9 million. On average for these eight counties, we find roughly 4,500 acres of heirs' property with an appraised value of $4,000 per acre. There are 365 counties (fig. 1) in the 11 States of the South where African Americans made up 25 percent or more of the population in 2010 (U.S. Census Bureau 2017). A simple extrapolation of these averages across all 365 counties would give an estimate of 1,642,500 acres valued at $6.57 billion.

There is wide variability in number of acres and appraised value per acre among the eight Black Belt counties in table 1, so any estimates must be treated with caution. That said, Dyer et al. (2009) considered their estimate for Macon County, AL, to be conservative. Data for the other seven rural Black Belt counties may be even more conservative as they are based on electronic tax records alone, without the extra effort of identifying additional cases through archival research. Moreover, these estimates only consider 365 out of 848 counties in the South. We know from table 1 that there is heirs' property in non-Black Belt counties, and, as these counties often are more wealthy, the values associated with heirs' properties outside the Black Belt may be higher.

With these caveats in mind, we feel confident that our estimates of 1.6 million of acres of land worth $6.6 billion held as heirs' property in the 365 counties of the Black Belt South are reasonable. We do not think that these estimates will be the final word on the extent and value of heirs' property and hope that others will add to the data on heirs' property. We present the data here to provide an empirical context to the discussion of economic constraints associated with heirs' property which follows. These constraints not only affect individual families but also economies of rural Black Belt counties in the South.

CONNECTION BETWEEN HEIRS' PROPERTY AND PERSISTENT POVERTY

In the preceding section, we estimated that 1.6 million acres valued at $6.6 billion are held as heirs' property in the 365 demographically defined Black Belt counties of the South. As such, this property represents dead capital—a form of capital that cannot be used to generate additional capital. The inability to accumulate wealth through direct use or leveraging of heirs' property represents a hindrance not only for individual families but also on the larger regional economy. Homes are allowed to deteriorate because there are no incentives to maintain them and increase their value. Farm and forest land often is left idle, generating neither employment, income, nor wealth. The property cannot be used for collateral to start a business or send a child to college.

In this section we identify and discuss three factors that make heirs' property a contributing factor to persistent poverty among African Americans in the South: (1) insecurity of ownership; (2) constraints to improvements that increase productive use and value; and (3) the absence of collateral value of heirs' property.

Insecurity of Ownership

Significant challenges faced African Americans wanting to buy property in the late 19th and through much of the 20th centuries. They had to accumulate enough money to make the purchase, and they needed to find an owner, almost invariably White, willing to sell land. In far too many cases, an even larger challenge has been to hold on to the land in the face of multiple challenges, including discriminatory practices of the USDA and anti-Black physical and economic violence, particularly in areas where there was (and is) direct economic competition such as the Sea Islands of South Carolina and Georgia (King et al. 2018, Lewan et al. 2001, Litwack 1998). Two sources of insecurity are particularly pertinent to owners of heirs' property: failure to pay property taxes and forced sale of land known as partition sales.

Failure to Pay Property Taxes

Heirs' property is vulnerable to loss through failure to pay property taxes and the efforts of speculators and developers who know how to use the tax system to their advantage. In a situation where many individuals own a share in heirs' property, and where many of these individuals have moved away and lost connection to the land, it is sometimes difficult to ensure that property taxes are paid. Dyer et al. (2009) found that 30 percent of the people paying property taxes on heirs' property in Macon County, AL, lived outside the State. Such physical separation from the land may increase the possibility that property taxes would not be paid, resulting in the land being sold at public auction.

Often but not always, one or more members of the family live in a home located on or near land owned as heirs' property. In such cases, these family members have a direct connection to the land and are likely to pay property taxes in a timely manner (Dyer 2007). Where there are no family members living on or in proximity to the land, it is not uncommon for connection to the land to fade and for property taxes to remain unpaid. In virtually every county, there are people who watch lists published in local newspapers of properties with delinquent taxes. In Macon County, AL, tax lien certificates are sold at auction on the third Tuesday in April, and these tax sales are always well attended by local citizens as well as out-of-county investors and developers. In some States, county revenue offices will accept tax payments on a property from anyone, and, over a matter of a few years, if the deeded owners do not pay their taxes but someone else has done so, the person paying the taxes is able to obtain what is known as a tax deed on the property. The family has a window of time in which they can regain possession if they have the means to do so, but all too often the land is lost to the family.

Partition Sales

A second mechanism through which heirs' property may be lost to the family is through a partition sale ordered by a judge as a result of a legal action brought by one or more of the tenants-in-common (Dyer and Bailey 2008, Mitchell 2014). A partition sale also may be initiated by an outsider who is able to buy a family member's share. This outsider, who is motivated to gain ownership of the land, now owns a fractional share of the heirs' property and can petition the court for a partition sale. Rural African Americans often are unable to compete in an auction setting with those who forced the partition sale. There is abundant literature documenting not only the loss of family land but also that the property often is sold for a fraction of its true value (Casagrande 1986, Chandler 2005, Craig-Taylor 2000, Dyer 2007, Mitchell et al. 2010). To add insult to injury, the family whose land was sold is required to pay court costs and lawyers' fees, including the costs of the lawyer representing the person forcing the partition sale (Dyer 2008).

Such partition sales are most common where heirs' property has a high market value, for example along the "Gullah-Geechee coast" of South Carolina (Rivers 2007). African-American populations were established there long before beachfront property in places like Hilton Head became a valuable commodity. The Coastal Community Foundation in Charleston, SC, estimated that 14 million acres of heirs' property throughout the "lowlands" of South Carolina and Georgia have been lost since the Civil War through partition sales to speculators or legal takings for failure to pay taxes (Jonsson 2007).

Vulnerability to partition sales is a disincentive to make home improvements. Dyer et al. (2009) reported that structural improvements made to houses held as heirs' property in Macon County, AL, were far less common than for houses with clear title, reflecting a pattern of non-investment. In the event of a partition sale, the value of any improvements would accrue to all heirs' property owners and not to the heir making the investment. A judge might be willing to consider investments made when distributing proceeds of a partition sale if careful records were kept, but there are no guarantees. As Rivers (2007: 7) says, owners of heirs' property are "a disadvantaged class of property ownership."

The Uniform Law Commission (n.d.) developed a Uniform Partition of Heirs Property Act (UPHPA) designed to provide heirs' property owners some protections against predatory acts by developers and speculators. Acting as a "uniform" act as opposed to State-specific legislation, the major reforms of the UPHPA include (1) a "buy-out" provision by co-tenants of the heir who wants to partition;

(2) a preference for partition in kind over partition by sale; and (3) partition sales based on open-market value versus auction value (ABA 2016). As of this writing (August 2019), 12 States and the U.S. Virgin Islands have enacted the uniform code, and 10 other States plus the District of Columbia have had the bill introduced in the legislature.

Constraints to Increasing Productive Use and Property Value

The absence of clear title and vulnerability to partition sales act as disincentives not only to housing improvements but also to investments that would increase productivity of farmland and timberland. This problem was first identified in a study of rural land owned by African Americans conducted by the Emergency Land Fund (1980). That study found heirs' property was being used less productively than non-heirs' property and that while 85 percent of heirs' property owners had never obtained a loan on the land, 97 percent of non-heirs' property owners had. Zabawa (1991) reported that farmers operating heirs' property were less likely to invest in productivity-enhancing improvements than farmers holding clear title to their land. A recent study of African-American farmers in Alabama found a significant difference in terms of land size and value, land productivity, and investment in land, with heirs' property owners comparing unfavorably with those who owned titled property (Baba 2010).

From the perspective of an heir who farms or grows trees on family land, heirs' property is at least a complication if not a source of uncertainty. Legally, this heir should lease the land from the family and the contract should be signed by all heirs, with an agreed-upon mechanism for sharing the proceeds. In practice, informal arrangements are common, where one heir simply takes on responsibility for managing the land and keeps the proceeds of any farm sales. On a small farm with limited productivity, this arrangement may not provoke questions or concerns. However, investing in improvements that would increase productivity may increase value of the land and cause other heirs to think that their interests would be best met by selling the land and distributing the proceeds.

The same set of disincentives applies to investments to increase productivity of timberland, which can exceed $200 to establish 1 acre of loblolly pine (Dooley and Barlow 2013), the most important tree species for the forest products industry in the South. From time of planting to harvest may be 2 decades or more, so any individual heir who invests will be vulnerable to a partition sale during that whole period. At time of harvest, a timber buyer will require a contract documenting the legal right of the owner to sell the timber. This would require the signature of all heirs, and some heirs may think they deserve a share of the sale price without having contributed to any of the production costs. There are of course cases where one heir will sell the timber without getting approval of or sharing the proceeds with other heirs (Dyer and Bailey 2008, Schelhas et al. 2017). Such sales create tensions within the family and increase the difficulty of making collective decisions in the future.

Absence of Collateral Value

Because, by definition, title to heirs' property is clouded, financial institutions and government agencies are reluctant to proceed with loans or grant programs. Technically, a mortgage or contract could be signed by all heirs, but the likelihood of that happening declines as the number of heirs increases. Distinctions based on age, residence, economic status, degree of connection to the land, and other factors complicate the process of consensus building. Moreover, banks and government agencies may be concerned that additional heirs may be identified, resulting in legal or other complications. As a consequence, clouded title means such property has little or no collateral value. Heirs' property cannot serve as collateral for loans to purchase or improve farmland or timberland, to obtain a mortgage to build a home, to either establish or expand a business, or to pay expenses of sending a daughter or son to college. In short, heirs' property is an impediment to wealth generation.

Unable to obtain a conventional mortgage to build a home, heirs' property owners often decide to purchase mobile homes which are less expensive to purchase, initially. However, loans on mobile homes carry higher interest rates because they are classified as unsecured personal loans. Because mobile homes tend to deteriorate and decline in value over time, unlike conventional homes, many heirs' property owners are locked into paying higher interest rates for a depreciating asset compared to site-built homes financed through a conventional mortgage. For many Americans, the home where they live represents a high proportion of their total wealth; the inability to gain access to a conventional mortgage market represents a serious obstacle to wealth generation for owners of heirs' property.

DISCUSSION

We believe that heirs' property is an important factor in explaining persistent poverty among African Americans in the South. Heirs' property does not affect everyone, but as researchers working on this topic, we can report that we rarely find African-American friends or acquaintances in the South who have no direct experience with the phenomenon.

We do not want to consider heirs' property only from a monetized perspective. There are positive cultural features of heirs' property, and the land itself can represent a

source of family and community stability as well as a source of personal independence (Dyer and Bailey 2008). We also acknowledge that using property as collateral can lead to loss of land if the borrower defaults on the loan. That said, the inability of heirs' property owners to access financial assets to build a home, start a business, send a child to university, or address any number of other needs and opportunities that families in the United States experience represents an obstacle to wealth generation and accumulation and contributes to persistent poverty. The estimate we provide that there is $6.6 billion in heirs' property in the Black Belt South, and much more across the South as a whole, helps frame the dimension of the problem but does not speak to the lived experience of the people involved, whose economic opportunities are limited and who experience the vulnerabilities associated with clouded title over land.

The issue of heirs' property reveals that ownership and the ability to enjoy the benefits of property are not the same. Limitations to ownership rights and benefits affecting African-American owners of heirs' property strike at a whole population of owners who have been disempowered, systematically and through conscious and calculated efforts on the part of White elites at local and State levels. Ownership of land should represent an important form of security, but, for generations, the legal and the wider political system has worked against the interests of African Americans. The disconnect between ownership and benefits is a legacy of asymmetrical power relationships tied to specific historical conditions. "In a society based on capitalism, land ownership becomes an essential and unalterable prerequisite for economic development and the exercise of substantial political influence" (Nelson 1979: 83).

Heirs' property does not only affect the present but has acted as a restraint on the full use and benefit from property since the property was first acquired. Land loss has been a common experience, undermining economic fortunes of many African-American families (Gilbert et al. 2002, King et al. 2018), and there is a general consensus that heirs' property has contributed to land loss through tax and partition sales (USDA 2007). Where land has not been lost but is entangled in the web of heirs' property, its productive potential has been limited for reasons described above. The difficulty of managing farmland and timberland held as heirs' property means that land often is left unmanaged or the house left to become increasingly derelict year after year, generating little economic benefit or becoming incapable of providing shelter to the family. Heirs' property cannot be used for collateral for the kinds of investment and wealth-generating purposes those with clear title are able to make, giving meaning to the phrase "dead capital."

Our estimate of $6.6 billion representing the value of heirs' property in the Black Belt South may seem like a small sum for a large region. But for the families involved, this property is an important part of their overall net worth. The prevalence of heirs' property also has wider community and societal impacts. Instability in ownership and the inability to fully utilize thousands of acres in county after county means that income, wealth, and employment from the land are diminished. Land values and the value associated with houses and other improvements also will be diminished, affecting tax revenues of local governments used to support schools, roads, and other needs. Historically, there is a strong connection between the ownership of land and community leadership in African-American communities, and the insecurity of heirs' property ownership weakens the foundation of that leadership. "At the individual and group level, the connection to family history and community and the sense of freedom and independence that is associated with land ownership often has extraordinary, perhaps incalculable value" (Georgia Appleseed 2013: 8).

Resolving Problems Associated with Heirs' Property

The topic of heirs' property has begun to attract increased attention within the USDA and other Federal agencies. In 2007, USDA Rural Development posted a request for information in the Federal Register (USDA 2007), noting that absence of clear title was an obstacle for heirs' property owners to gain access to USDA programs. The USDA (2008) followed up with a second Federal Register notice of funds available to established cooperative working relationships with community organizations to address heirs' property issues as they relate to USDA programs. Through the Southern Research Station, the USDA Forest Service has taken a strong interest in the topic of heirs' property, partnering with the Natural Resources Conservation Service, the U.S. Endowment for Forestry and Communities, the Federation of Southern Cooperatives, and the Center for Heirs' Property Preservation (Schelhas et al. 2017).

Passage of the 2018 Farm Bill created opportunity for heirs' property owners who can document they have controlling interest in farm or forest lands to gain access to a variety of USDA programs, including the Conservation Reserve Program that pays landowners to remove environmentally sensitive land from production (Bailey et al. 2019). This is an important breakthrough in Federal policy but, as with all policies, how the new policy will be implemented at the local level remains to be seen. USDA programs to improve low-income housing (e.g., Section 502 direct loan and loan guarantee programs, and Section 504 home improvement loan and grant programs) were not included in the 2018 Farm Bill. Heirs' property owners of homes continue to face constraints to maintaining the value of their properties.

Significant action is also being taken at the local and regional levels. Research supported by a Ford Foundation grant directed by Baharanyi (n.d.) registered over two dozen organizations that assist individuals and communities with heirs' property issues, including the Arkansas Land and Farm Development Corporation, the North Carolina Association of Black Lawyers, the Land Loss Prevention Project, and the Center for Heirs' Property Preservation. Another community-based organization, the Federation of Southern Cooperatives/Land Assistance Fund also has a grant from the USDA that supports their Regional Heirs Property and Mediation Center.

The Historically Black Land Grant Universities, or 1890s institutions, have heirs' property programs as well, often directed through their Cooperative Extension Programs, their Agricultural Experiment Stations, or with support from local, State, and Federal grants such as the Socially Disadvantaged and Veteran Farmers and Ranchers Program and the Beginning Farmer and Rancher Development Program. Through USDA support, Alcorn State University in Mississippi has the Socially Disadvantaged Farmers and Ranchers Policy Research Center that also examines heirs' property issues.

Finally, at the regional level, the Southern Rural Development Center (SRDC) is initiating heirs' property research as well. The SRDC, a consortium of land grant universities (1862 and 1890 institutions), other public universities and colleges, community-based organizations, and government agencies, added heirs' property into its 2018 plan of work under emerging issues. To date, a survey of interested members has taken place as well as an inventory of organizations working on the heirs' property issue. Future actions include applying for grant support and convening a regional meeting to focus on research, outreach, and policy issues related to heirs' property.

Protecting the interests of heirs' property owners almost always involves clearing title to the property. The first step in this process is to identify all heirs. This can be a challenge when upwards of 200 heirs may be associated with a particular property. The impetus to clear title usually comes from one person or a small group of heirs, but they may not know everyone. A process of due diligence, with notices published in newspapers and other efforts to identify heirs, must be followed. Once all heirs have been identified, a consensus needs to be reached among heirs as to what should be done with the property. There are a number of options that can be considered, including (1) do nothing, (2) sell the land and distribute the proceeds according to shares, (3) let one or more heirs buy out the interest of the others, (4) create a family trust where the trustee takes on a fiduciary responsibility for managing the property on behalf of all members of the family, (5) create a formal partnership, or (6) create a Limited Liability Corporation (LLC) which owns the land and, through formal bylaws, determines to whom shares in the land can be sold (typically only to family members making up the LLC). The process of clearing title can take several years and involve lawyers. Because success depends on unanimity among all heirs on the chosen course of action, there is no foregone conclusion once the process has started.

CONCLUSIONS

Land and improvements on the land represent productive assets for farmers, ranchers, and timberland owners, as well as sanctuary and security for homeowners and communities. Because title is clouded, heirs' property represents a multi-generational obstacle to the accumulation of wealth among African Americans in the South and in this way contributes to persistent poverty. We made three points to support this view. First, heirs' property is vulnerable to loss through tax or forced partition sales, which undermines a key source of a family security, status, and wealth. Second, the collective nature of heirs' property ownership represents a disincentive for individual investment in property improvements that would increase productivity of farm, pasture, and timber lands, or to repair houses, barns, and other structures. Until recently, the absence of clear title meant that heirs' property owners were not eligible for government programs designed to help farmers and timberland owners. How provisions of the 2018 Farm Bill are implemented will be an important topic for future research. The 2018 Farm Bill does not provide heirs' property owners of homes to access USDA programs designed to help homeowners with limited incomes. Finally, the clouded nature of title to heirs' property means that such property has no collateral value. The land cannot be used as collateral for a mortgage to build a home or start a business or for other productive use. The cumulative effect of $6.6 billion in clouded title represents a significant impediment on the economic prospects of African Americans in the Black Belt South.

We believe a strong case can be made that heirs' property contributes to persistent poverty, but more research in more counties is needed to solidify this argument. What we need at this point is research documenting the extent and value of land that is tied up as dead capital. Such data would provide a stronger case for policy reforms within Federal and State agencies that would allow heirs' property owners to make improvements to their homes and increase the productivity of farm, pasture, and timber lands. FEMA and the State of Louisiana have identified mechanisms to give heirs' property owners access to government program benefits, and various USDA agencies have been engaged in direct work with heirs' property owners, attempting to understand the needs of such owners and to consider the legal adjustments necessary to meet those needs. Such data could persuade Congress to find legislative solutions to

constraints faced by heirs' property owners and encourage States to adopt the UPHPA and other legislation that would transform heirs' property into productive assets that can be used to reverse the persistence of poverty in many Black Belt counties of the South.

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LITERATURE CITED

Alabama Appleseed. 2009a. Heir list, Pickens County, August 13, 2009. Provided to lead author by Craig Baab, Alabama Appleseed on April 12, 2017.

Alabama Appleseed. 2009b. Heir list, Calhoun County, June 21, 2009. Provided to lead author by Craig Baab, Alabama Appleseed on April 12, 2017.

American Bar Association [ABA]. 2016. Restoring hope for heirs property owners: the Uniform Partition of Heirs Property Act. www.americanbar.org/publications/state_local_law_news/2016-17/fall/restoring_hope_heirs_property_owners_uniform_partition_heirs_property_act/. [Date accessed: October 1, 2018].

Baab, C.H. 2011. Heir property: a constraint for planners, an opportunity for communities—the legacy of Steve Larkin. Planning & Environmental Law. 63(11): 3–11.

Baba, A. 2010. The impact of heir property and titled property on African American land tenure, investment, and agricultural decision making in south central Alabama. Tuskegee, AL: Tuskegee University. M.S. thesis.

Baharanyi, N. [N.d.] Land loss and associated organizations and projects supported by the Ford Foundation. Building a coalition in Southern Black Belt States for an inclusive asset-building policy and program agenda: focus on victims of Katrina, Rita, other recent hurricanes and Black-owned land loss. [Place of publication unknown]: [Publisher unknown].

Bailey, C.; Barlow, R.; Dyer, J. 2019. Practical constraints to timber management among African American owners of heir property. Landscape and Urban Planning. 188: 180–187.

Bartels, C.T. 2012. Identifying and addressing heirs property: a case study of Wake County, North Carolina. Chapel Hill, NC: University of North Carolina at Chapel Hill. M.S. project.

Bobroff, K.H. 2001. Retelling allotment: Indian property rights and the myth of common ownership. Vanderbilt Law Review. 54(4): 1559–1623.

Bromley, D. 2008. Formalizing property relations in the developing world: the wrong prescription for the wrong malady." Land Use Policy. 26: 20–27.

Carpenter, A.; Jones, S.; Pippin, J.S. 2016. Understanding heirs' properties in the Southeast. Partners update, March/April 2016. Atlanta, GA: Federal Reserve Bank of Atlanta. https://www.frbatlanta.org/community-development/publications/partners-update/2016/02/160419-understanding-heirs-properties-in-southeast.aspx. [Date accessed: July 16, 2018].

Casagrande, J.G. 1986. Acquiring property through forced partitioning sales: abuses and remedies. Boston College Law Review. 27(4): 755–783.

Chandler, A.B. 2005. "The Loss in My Bones": protecting African American heirs' property with the public use doctrine. William & Mary Bill of Rights Journal. 14(1): 387–414.

Copeland, R.W. 2013. In the beginning: origins of African American real property ownership in the United States. Journal of Black Studies. 44(6): 646–664.

Craig-Taylor, P. 2000. Through a colored looking glass: a view of judicial partition, family land loss, and rule setting. Washington University Law Review. 78(3): 737–788.

Deaton, B.J. 2005. Land 'in heirs': building a hypothesis concerning tenancy in common and the persistence of poverty in Central Appalachia. Journal of Appalachian Studies. 11(1&2): 83–94.

Deininger, K.; Kirk, M. 2003. Land policy, poverty alleviation and sustainable rural development. Agriculture and Rural Development. 10(2): 44–47.

DeSoto, H. 2000. The mystery of capital: why capitalism triumphs in the West and fails everywhere else. New York: Basic Books. 288 p.

Dooley, E.; Barlow, R. 2013. Costs and trends of southern forestry practices 2012. FOR_2001. Auburn, AL: Alabama Cooperative Extension System. http://www.aces.edu/pubs/docs/F/FOR-2001/FOR-2001-low.pdf. [Date accessed: January 11, 2017].

Dudenhefer, P. 1993. Poverty in the rural United States. Focus. 15(1): 37–45.

Duncan, C. 2014. Worlds apart. 2d ed. New Haven, CT: Yale University Press.

Dyer, J. 2007. Heir property: legal and cultural dimensions of collective landownership. Bulletin 667. Auburn, AL: Alabama Agricultural Experiment Station, Auburn University.

Dyer, J. 2008. Statutory impacts of heir property: an examination of appellate and Macon County court cases. In: Facing global crisis: local solutions to energy, food, and persistent poverty. Proceedings of the 66th annual professional agricultural workers conference; Tuskegee, AL, December 7–9, 2008.

Dyer, J.; Bailey, C. 2008. A place to call home: cultural understandings of heir property among rural African Americans. Rural Sociology. 73(3): 317–338.

Dyer, J.; Bailey, C.; Van Tran, N. 2009. Ownership characteristics of heir property in a Black Belt county: a quantitative approach. Southern Rural Sociology. 24(2): 192–217.

Emergency Land Fund [ELF]. 1980. The impact of heir property on Black rural land tenure in the Southeastern region of the United States. Report submitted to the U.S. Department of Agriculture/Farmers Home Administration. Project Director: Attorney Rose Sanders. 591 p. https://babel.hathitrust.org/cgi/pt?id=coo.31924067935720;view=1up;seq=5. [Date accessed: July 16, 2018].

Figures, M.A. 1971. Final report, Southern Land Project/Alabama region. In: Only six million acres: the decline of Black owned land in the rural South. Appendix B. [Report sponsored by Clark College of Atlanta, GA and funded by the Rockefellers Fund under direction of Robert S., Browne, Black Economic Research Center, New York, NY. June 1973. Reprinted March 10, 1975. Atlanta, GA: Emergency Land Fund].

Gaventa, J. 1998. The political economy of land tenure: Appalachia and the Southeast. In: Jacobs, H.M., ed. Who owns America? Social conflict over property rights. Madison, WI: University of Wisconsin Press.

Geisler, C. 1995. Land and poverty in the United States: insights and oversights. Land Economics. 71(1): 16–34.

Georgia Appleseed. 2013. Unlocking heir property ownership: assessing the impact on low and mid-income Georgians and their communities. Atlanta, GA: Georgia Appleseed Center for Law & Justice. https://gaappleseed.org/media/docs/unlocking-heir-property.pdf. [Date accessed: July 16, 2018].

Gilbert, J.; Sharp, G.; Felin, M.S. 2002. The loss and persistence of Black-owned farms and farmland: a review of the research literature and its implications. Southern Rural Sociology. 18(2): 1–30.

Graber, C.S. 1978. Heirs property: the problems and possible solutions. Clearinghouse Review. 12: 273–84.

Johnson Gaither, C. 2016. Have not our weary feet come to the place for which our fathers sighed? Heirs' property in the Southern United States. Gen. Tech. Rep. SRS-216. Asheville, NC: U.S. Department of Agriculture Forest Service, Southern Research Station. https://www.srs.fs.usda.gov/pubs/gtr/gtr_srs216.pdf. [Date accessed: July 16, 2018].

Jonsson, P. 2007. Preserve or let go: Blacks debate fate of their landmarks. Christian Science Monitor: January 31: 1.

King, K.Q.; Spencer, D.; Wood, J.G.; Sinkewicz, M. 2018. Black agrarianism: the significance of African American landownership in the rural south. Rural Sociology. 83(3): 677–699.

Kluckow, R. 2014. The impact of heir property on post-Katrina housing recovery in New Orleans. Fort Collins, CO: Colorado State University. M.A. thesis.

Kotlikoff, L.J.; Summers, L.H. 1981. The role of intergenerational transfers in aggregate capital accumulation. Journal of Political Economy. 89(4): 706–732.

Lewan, T.; Barclay, D.; Breed, A.G. 2001. Landownership made Blacks targets of violence and murder. Associated Press. December 3. [Three-part series, reprinted in The Authentic Voice]. http://theauthenticvoice.org/mainstories/tornfromtheland/. [Date accessed: July 16, 2018].

Litwack, LF. 1998. Trouble in mind: Black Southerners in the age of Jim Crow. New York: Knopf.

Mitchell, T.W. 2005. Destabilizing the normalization of rural Black land loss: a critical role for legal empiricism. Wisconsin Law Review. 2: 557–615.

Mitchell, T.W. 2014. Reforming property law to address devastating land loss. Alabama Law Review. 66(1): 1–61.

Mitchell, T.W.; Malpezzi, S.; Green, R.K. 2010. Forced sale risk: class, race and the "double discount." Florida State Law Review. 37: 589–658.

Nelson, W.E. 1979. Black rural land decline and political power. In: McGee, L.; Boone, R., eds. The Black rural landowner – endangered species: social, political, and economic implications. Westport, CT: Greenwood Press: 55–66.

Patterson, J. 2018. Heir property in the South: a case study of a resettlement community. Auburn, AL: Auburn University. M.S. thesis.

Raper, A.F. 1936. Preface to peasantry: a tale of two Black Belt counties. Chapel Hill, NC: University of North Carolina Press.

Rastogi, S.; Tallese, D.; Johnson, E.M. [et al.]. 2011. The Black population: 2010. 2010 Census Briefs. September 2011. Washington, D.C.: U.S. Census Bureau. https://www.census.gov/prod/cen2010/briefs/c2010br-06.pdf. [Date accessed: July 16, 2018].

Rivers, F.R. 2007. The public trust debate: implications for heirs' property along the Gullah Coast. Southeastern Environmental Law Journal. 15: 147–69.

Salamon, L.M. 1979. The time dimension in policy evaluation: the case of the New Deal land reform experiments. Public Policy. 27: 129–183.

Schelhas, J.; Hitchner, S.; Johnson Gaither, C. [et al.]. 2017. Engaging African American landowners in sustainable forest management. Journal of Forestry. 115(1): 26–33.

Schulman, M.O.; Garrett, P.; Luginbuhl, R.; Greene, J. 1985. Problems of landownership and inheritance among Black smallholders. Agriculture and Human Values. 2(3): 40–44.

Shimkin, D.; Louie, G.; Frate, D. 1978. The Black extended family: a basic rural institution and a mechanism of urban adaptation. In: Shimkin, D.; Shimkin, E.; Frate, L., eds. The extended family in Black societies. The Hague: Mouton: 25–147.

Sledd, J.C. 2005. Events leading to the American Indian Probate Reform Act of 2004 (AIPRA). [Paper presented at the Institute for Indian Estate Planning & Probate's national symposium on AIPRA, March, 2006].

Southern Coalition for Social Justice. 2009. Fair housing and heirs' property in Orange County, North Carolina. November 14, 2008. Durham, NC: Southern Coalition for Social Justice. 62 p.

Uniform Law Commission. [N.d.]. Partition of Heirs Property Act. http://www.uniformlaws.org/Act.aspx?title=Partition+of+Heirs+Property+Act. [Date accessed: July 14, 2018].

U.S. Census Bureau. 2017. Census Data Mapper. http://www.census.gov/geo/maps-data/maps/datamapper.html. [Date accessed: January 11, 2017].

U.S. Census Bureau. 2018. American Fact Finder. http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml#. [Date accessed: July 11, 2018].

U.S. Department of Agriculture [USDA]. 1992. Census of Agriculture. Volume 1, part 51, table 15. Washington, DC. http://agcensus.mannlib.cornell.edu/AgCensus/censusParts.do?year=1992. [Date accessed: October 3, 2018].

U.S. Department of Agriculture [USDA]. 2007. Heir property. Advanced notice of proposed rulemaking. Federal Register 72: 1190–1192. U.S. Department of Agriculture Rural Business-Cooperative Service, Rural Utilities Service. https://www.federalregister.gov/documents/2007/01/10/E6-22102/heir-property. [Date accessed: July 16, 2018].

U.S. Department of Agriculture [USDA]. 2008. Notice of funds availability: cooperative agreements for heir property. Federal Register 73, No. 235: 74133–74137. https://www.gpo.gov/fdsys/pkg/FR-2008-12-05/pdf/E8-28805.pdf. [Date accessed: July 16, 2018.

U.S. Department of Agriculture [USDA]. 2019. Census of Agriculture. https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/. [Date accessed: May 3, 2019].

U.S. Department of Agriculture Economic Research Service [USDA ERS]. 2016. Rural poverty & well being. Washington, D.C.: U.S. Department of Agriculture Economic Research Service. Last updated 14 September 2016. https://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/. [Date accessed: July 16, 2018].

U.S. Department of Agriculture Economic Research Service [USDA ERS]. 2018. Persistent poverty. https://www.ers.usda.gov/data-products/county-typology-codes/descriptions-and-maps/#ppov. [Date accessed: October 3, 2018].

U.S. Department of Commerce [USDC]. 1920. Farm statistics by color and tenure of farmer. In: Census of Agriculture. Washington, DC: U.S. Department of Commerce. Chapter IV. http://agcensus.mannlib.cornell.edu/AgCensus/censusParts.do?year=1920. [Date accessed: October 3, 2015].

Washington, B.T. 1901. Up from slavery: an autobiography. Garden City, NY: Doubleday & Co.

Wimberley, R.C.; Morris, L.V. 1997. The Southern Black Belt: a national perspective. Lexington, KY: Rural Studies, Tennessee Valley Authority.

Zabawa, R. 1991. The Black farmer and land in south-central Alabama: strategies to preserve a scarce resource. Human Ecology. 19(1): 61–81.

Zabawa, R.; Baharanyi, N. 1992. Estate planning strategies and the continuing phenomenon of Black-owned land loss. The Rural Sociologist. 12(3): 13–23.

Zabawa, R.; Baharanyi, N.; Amougou, M. 1994. Factors associated with Black-owned land loss. Journal of Agricultural and Food Information. 2(4): 23–41.

The Sustainable Forestry and African American Land Retention Program

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Abstract—African-American rural landholdings have declined precipitously over the past century, and heirs' property is believed to be a significant factor in this decline. Over the same time period, under-participation in sustainable forest management has resulted in limited economic returns from land. The Sustainable Forestry and African American Land Retention Program was launched in 2012 to address these two issues through an integrated, community-based program of legal and forestry outreach and assistance. Family land has important heritage value to African-American landowners, and many want future generations to retain it. We find that addressing the issues of heirs' property and promoting forestry engagement work synergistically in this program. In particular, the potential economic returns of sustainable forest management can motivate families to come together to resolve heirs' property and work toward future land ownership strategies that are both economically productive and supportive of family legacies.

INTRODUCTION

African-American rural landholdings have declined precipitously over the past century due to a number of factors including outmigration; voluntary sales; foreclosures; lack of access to capital and credit; illegal takings; purposeful trickery and withholding of legal information; actual or threatened violence; and various forms of racism and discrimination by individuals, organizations, and government agencies (Dyer and Bailey 2008, Gilbert et al. 2002, Zabawa 1991, Zabawa et al. 1990). The rate of African-American land loss has far exceeded losses for other racial and ethnic groups since the turn of the 20th century (Dyer and Bailey 2008, Gilbert et al. 2002, Gordon et al. 2013). One of the primary contributors to African-American land loss is believed to be the prevalence of "heirs' property" among rural, Black populations (Dyer and Bailey 2008, Dyer et al. 2009, Zabawa 1991). Heirs' property or "tenancy-in-common" is inherited land passed on intestate, without clear title, typically to family members.

Over this same time period, limited engagement in forest management has resulted in reduced returns from land and decreased land value for African Americans. Concerns about African-American participation in forest management have been voiced for at least 3 decades. Hilliard-Clark and Chesney's (1985) study of two North Carolina counties found no Black forest owners who had received technical assistance from State or local forestry agencies. Results also showed that heirs' property limited forestry activities for many, and there was a widespread lack of knowledge about and perception of bias in program administration. Many of these same issues persist today. Recent research in Mississippi (Gordon et al. 2013) found that African-American forest owners reported high levels of distrust of government agency staff, issues of heirs' property and land loss, and limited engagement with forestry professionals. Yet, studies also indicate that African Americans have strong attachments to the land and interest in managing forest lands (Gordon et al. 2013, Hilliard-Clark and Chesney 1985, Schelhas et al. 2012). Forestry is a productive land use appropriate for many landowners who are employed off the land or retired; however, lack of familiarity and heirs' property often hinder substantial African-American engagement in forestry. The persistence and linkages of these two issues provide a compelling reason to increase outreach to African-American forest owners and to provide assistance with heirs' property and sustainable forest management.

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The Sustainable Forestry and African American Land Retention Program (SFLR) was launched in 2012 by the U.S. Endowment for Forestry and Communities, in partnership with the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) and Forest Service. The SFLR is a 6-year program to test the potential of sustainable forestry practices to help stabilize African-American land ownership, increase forest health, and build economic assets in the southern Black Belt region. The program began with 30-month pilot projects initiated with community-based partner organizations[1] working in multi-county Black Belt[2] regions in northeastern North Carolina, coastal counties of South Carolina, and west-central Alabama. The SFLR entered a second phase in 2015 and 2016, when the original projects in three States were extended for 3 more years and new projects were added in Georgia, Arkansas, Mississippi, and Virginia. The SFLR seeks to stabilize ownership and increase the economic value of land by resolving ownership issues and increasing the use of sustainable forest management. It has provided financial and program support to community-based projects, with each project designed to build and coordinate a system of support for African-American landowners involving nonprofits, academic institutions, for-profit service companies, and government agencies. The primary activities of the projects have been providing information and legal assistance for resolving heirs' property issues and estate planning, raising awareness and educating landowners about forestry, and building linkages among landowners and forestry assistance providers. The program also included a research component to establish baseline conditions for the pilot regions in order to understand current issues and measure progress, guide program activities, and add to the scholarly and applied literature on African-American forest owners.

BACKGROUND ON AFRICAN-AMERICAN LAND OWNERSHIP AND FOREST MANAGEMENT

Forest management and heirs' property are intertwined for African-American landowners in complex ways. The prevalence of heirs' property among rural, Black populations is linked to both low productivity of land and land loss (Gordon et al. 2013, Hitchner et al. 2017). Heirs' property is inherited land that is held in common by individual shareholders who each own a fractional interest in the entire property, which remains in a deceased owner's name (Dyer and Bailey 2008). Shared ownership in the form of heirs' property often makes it difficult to productively use land and often results in a diminution of wealth for affected families (Dyer and Bailey 2008). The benefits of any individual shareholder investments in the property are shared by all owners, reducing the incentive for any one individual to invest. Furthermore, heirs' property owners may be restricted by other heirs' property owners from many land use and improvement options, which could include harvesting standing timber or planting trees for future harvests, accessing credit from banks for investments in the property, and participating in various land improvement programs offered by Federal or State governments (Dyer and Bailey 2008, Dyer et al. 2009). While such activities are not impossible for heirs' property owners, they generally require that all heirs agree on a plan and/or legally designate an individual or group as responsible for management. Such agreement may be very difficult when there is a large number of geographically dispersed heirs who have different knowledge levels of the land and diverging interests in its future, as is often the case when heirs' property has been passed down through several generations. Many family-held parcels of land are also lost due to delinquency in paying property taxes, often because of the complexity of agreeing to an equitable payment distribution or organizing a number of heirs, many of whom do not live on the land or have a direct interest in maintaining it, to pay taxes on time (Reid 2003, Rivers 2006). As small family farms have declined, heirs' property land often is covered in unmanaged second-growth forest (Schelhas et al. 2017a).

In the 13 southern States, there are 4.6 million private forest owners holding 87.0 percent of the forest land, of which family forest owners constitute 4.5 million owners holding 57.5 percent of the forest land (Butler et al. 2016). While family forest owners have been extensively studied, there have been few regional studies of African-American forest owners. Our primary understanding of how African-American forest owners and ownerships differ from White forest owners and ownerships comes from Forest Service studies of non-industrial private or family forest owners. Birch et al. (1982) found that, in 1978, African Americans comprised 8.5 percent of family forest landowners and held 4.7 percent of the family forest lands. Recent data from the Forest Service's National Woodland Owner Survey (Butler et al. 2016) showed that African Americans comprised 4.6 percent of family forest landowners and held 1.7 percent of the family forest land. Although these surveys are related, methodological changes over time limit comparability, and the relatively small percentage of African-American forest landowners makes it difficult to examine statistically differences among forest landowner characteristics, values, and behaviors by race. In spite of the relatively small percentages of ownership and forest

[1] Center for Heirs' Property Preservation, SC; The Roanoke Center, NC; and Limited Resource Landowner Education and Assistance Network (LRLEAN) and Federation of Southern Cooperatives/Land Assistance Fund, AL.

[2] Wimberley and Morris (1997: 2) define the Black Belt as a "social and demographic crescent of southern geography containing a concentration of black people."

land held by African Americans, this land has important social, economic, cultural, and political consequences for rural minority communities (Gilbert et al. 2002).

More focused, local studies on African-American forest landowners have found African-American forest owners to be similar to the broader population of family forest owners in that they have diverse ownership objectives and occupations, while differing in tending to have smaller tracts of land and to either not engage in forest management or to manage land less intensively than the broader forest owner population (Gan et al. 2003). They have also been found to be generally unaware of or unlikely to use assistance programs, and they have faced more constraints than their White counterparts (Gan et al. 2003, Guffey et al. 2009). Recommended strategies for extension and outreach personnel to address these concerns have included creating awareness of the benefits of forest management, addressing obstacles (such as distrust and inability to afford cost sharing), increasing participation in financial assistance programs, increasing technical assistance in forest management, and assisting with timber sales (Gan and Kolison 1999, Gan et al. 2003, Guffey et al. 2009, Schelhas et al. 2012).

Several studies have examined participation in conservation assistance programs and forest management practices. Gordon et al. (2013) discuss African-American landowner relationships and distrust with forestry assistance providers, including USDA and county forestry committees. Gan et al. (2005) analyzed participation in conservation programs and found that neither White nor non-White landowners had high participation rates in conservation programs. White landowners were more likely to participate in some programs [e.g., Conservation Reserve Program (CRP)] and enrolled more acres in the CRP and FIP (Forestry Incentives Program). In comparison, non-Whites were more likely to be dissatisfied with program participation and less likely to be able to afford the cost share. Analyzing the same dataset, Onianwa et al. (2004) found that membership in a conservation organization was a significant indicator of participation in agricultural cost-share programs. Onianwa et al. (1999) also found that non-Whites had fewer acres enrolled in the CRP, but there was no significant difference among White and non-White landowners in plans to retain trees after the contract period. Studying timber harvesting and use of assistance, Gan and Kebede (2005) found that African Americans with large tracts, like White owners with large tracts, were more likely to harvest timber. However, African-American farmers were less likely to harvest timber than their White counterparts, and the existence of forest management plans was an important predictor of African-American owners seeking technical and financial assistance. Gordon et al. (2013) note that the multiple owners of heirs' property make forest management practices such as thinning, harvesting, and prescribed burning difficult because these activities require proof of ownership and a contract signed by each owner.

There have been a number of efforts to develop extension and outreach programs for underserved and African-American forest landowners to address the issues described above (Hughes et al. 2005). The community-based forestry approach employed by the Federation of Southern Cooperatives/Land Assistance Fund went beyond technical assistance for individual landowners to also include networking, coalition-building, and cooperative development with the goals of increasing land retention, improving access to public and private services, and implementing land-based income-earning strategies (Diop and Fraser 2009). Alabama A&M University and the Forest Service developed community-based workshops designed to build community capacity and networks, stimulate land management, and build connections among landowners and technical personnel (Hamilton et al. 2007). The Limited Resource Landowner Education and Assistance Network (LRLEAN) in Alabama facilitated access of African-American landowners to NRCS cost-share programs, helping to overcome a longstanding disconnect (Christian et al. 2013).

In summary, there is evidence of declining African-American land ownership and low participation in forest management, and these show strong links to heirs' property. Recent outreach efforts have focused on community-based programs to address these issues. The community-based SFLR represents an intensive, multi-year effort to simultaneously address land ownership issues and promote sustainable forest management across the southern Black Belt region. The size and comprehensiveness of this program provide an opportunity to gain insights that can be useful for addressing heirs' property more broadly. In this paper, we summarize research associated with the SFLR, including our results on land ownership and the meaning of the land, historical and current participation in forestry, and the role of forestry in addressing heirs' property. More details can be found in Hitchner et al. (2017) and Schelhas et al. (2017a, 2017b, 2018).

METHODS AND STUDY SITES

In 2014, near the start of the SFLR, we conducted baseline research to understand the characteristics, land ownership situation, and forest management involvement of landowners in the three pilot project sites—North Carolina, South Carolina, and Alabama. Our research approach was inspired by interdisciplinary rapid appraisal techniques developed in association with international agriculture and agroforestry development programs. This approach helps research teams to gain a broad understanding of complex social and agricultural systems in a short period of time as a precursor to conservation and development projects (Russell and Harshbarger 2003).

Accordingly, we utilized an interdisciplinary research team working on the ground for a period of 3 weeks in each of three States and conducted qualitative interviews sampled at the household and/or family level (i.e., landowners). The research team consisted of social scientists and foresters to facilitate simultaneous engagement with the social and forest conditions within which African-American landowners operate.

We chose family land ownership as the unit of analysis because heirs' property land is often owned at the family level. Interviews were arranged with one member of each family landowning group, and that member was asked to invite other members to be present, including those residing in other households and of different generations. A purposive sample of 20 landowners was assembled by the partner organization in each of the three States. Landowners with 10 or more acres of land were selected and were evenly distributed between core participants in the pilot projects and non-participants. Core participants were from families already engaged in the pilot projects, which had begun about 10 months before the research was undertaken. Non-participating families were identified by project foresters through extension agents and other community contacts. The purposive sample was intended to represent the diversity of family land ownerships present in the project sites, and the samples were chosen to represent diversity in parcel size, forest conditions, gender, income, employment status and occupation, management objectives, and experience with forestry.

The social science team conducted a lengthy interview with each of the 60 landowning families. The interviews ranged from 2 to 4 hours and were conducted in the families' homes, land, or nearby community centers. Interviews were often followed by property visits and/or less formal conversations. Landowners were encouraged to have multiple family members present for the interviews in person or by phone. We believed that including absentee landowners in our sample was important, and several interviews of absentee landowners residing in other States were conducted entirely by phone. The research team was introduced by pilot project foresters at the beginning of each interview. A forester also visited each property to conduct a rapid assessment of forest conditions.

The social science interviews were conducted conversationally using a semi-structured interview guide (see Schelhas et al. 2017b). The interview guide covered: (1) land and forest characteristics (e.g., acreage held, land uses, forest conditions); (2) land and forest owner characteristics (e.g., demographics); (3) present and past land and forest management practices and forest conditions; (4) early and recent experiences, values, and attitudes related to land and forests; (5) forms of ownership and heirs' property, tax status, and informal land allocations; (6) social relationships relating to forestry and membership in forestry organizations; (7) future interests and plans for family land and forests; and (8) interest in working with other forest owners, for example, to market timber.

In 2016 and 2017, we conducted followup research focusing on successful engagement in forestry in the same pilot project sites. For this research, we developed a qualitative interview guide in consultation with SFLR personnel that focused on both broad questions and specific issues, including: (1) how African-American landowners had become engaged in the SFLR projects; (2) types and assessments of relationships that landowners had formed with forestry professionals and markets (including consulting foresters, agency foresters, and timber buyers/forest product industries); (3) types and assessments of systems that had been developed for forest landowners to obtain necessary technical and financial assistance; (4) whether and how landowners with smaller tracts and lower quality timber stands had been able to obtain services and access markets; (5) types of timber and nontimber forest products African-American forest owners had sold; (6) specific new ideas and arrangements that had emerged during the course of the SFLR projects and potential for replication; and (7) accessibility and benefits of forest owner organizations and certification for African-American forest owners as they become engaged in forestry.

We then worked with project foresters to identify landowners and forestry professionals to be interviewed, developing a purposive sample focused primarily on those involved in new and innovative relationships but also including some landowners who had challenges or difficult experiences. We interviewed pilot project program foresters, program collaborators, landowners, and forestry professionals. We began with in-person interviews, but followed up by phone when in-person interviews could not be arranged. A total of 33 interviews, ranging from 1 to 2 hours, were conducted with a broad range of individuals. We emphasized successful landowners and ones facing enduring obstacles (nine in Alabama, five in North Carolina, and six in South Carolina). In each State, we also interviewed one or more individuals in each of the categories: project foresters, State forestry agency employees, and NRCS employees. We also interviewed two cooperative extension agents (South Carolina and North Carolina), one forest industry employee (South Carolina), one private forestry consultant (Alabama), and one logger (South Carolina). Total interviews by State were 13 for Alabama, 8 for North Carolina, and 12 for South Carolina. As before, we analyzed data from these interviews using NVivo software, beginning with our key themes but also identifying and exploring new themes as they emerged.

RESULTS

Landowners and Land Ownership

Nearly two-thirds of the primary interviewees were between 51 and 70 years old, and only five were under 50 (table 1). Interviewees tended to be highly educated (nearly 60 percent had advanced college degrees, compared to 23 percent of forest owners Southwide.[3] Many were or had been employed in professional occupations (particularly teaching and educational administration), although 60 percent of the interviewees were retired (table 1). However, incomes were generally modest (table 1)—perhaps because many interviewees were retired public school employees. All interviewees were African-American, and the gender split was nearly equal (table 1). In sum, interviewees tended to be older, more highly educated, slightly less wealthy, and more likely to be retired than the larger population of family forest owners in the U.S. South (Butler et al. 2016). Landholding sizes were modest but appropriate for forestry, with the majority between 21 and 100 acres (table 2). About 40 percent faced heirs' property issues on some or all of their land, while 60 percent reported having a title to their land (sometimes jointly with other family members) (table 2). More than two-thirds of the respondents had inherited land, and about one-fifth had purchased all or some of their land (table 2). A number of retirees had lived and worked in other parts of the country (typically New York for South Carolina interviewees; Washington, DC, for North Carolina interviewees; and often Chicago and Detroit for Alabama interviewees). Several had been born in northern cities but maintained ties to family land. Many interviewees were now living on family land that they had some association with when growing up, either living there or visiting as children. Notably, only 12 percent reported making a profit from their land, while the remainder incurred net costs (generally taxes) to maintain their landholdings (>50 percent) or were just breaking even (25 percent) (table 2).

Table 1—Demographic characteristics of principal interviewee of African-American families owning ≥10 acres of land (n=60)

Demographic	Number	Percent
Age (in years)		
<50[a]	5	8.3
51–70	40	66.7
>70	15	25.0
Gender		
Male	21	35.0
Female	23	38.3
Couple	16	26.7
Education (primary interviewee)		
High school[b]	2	3.3
Some college	14	23.3
Bachelors	7	11.7
Post graduate	35	58.3
No response	2	3.3
Employment		
Part-time employed	3	5.0
Full-time employed	20	33.3
Retired	37	61.7
Income		
<$25,000	8	13.3
$25,000–$50,000	8	13.3
$50,000–$100,000	13	21.7
$100,000–$250,000	5	8.3
>$250,000	3	5.0
No response	23	38.3

[a] Four additional young people (age <20) attended interviews with family members.

[b] Three parents in multi-generation interviews had less than a high school education.

Land Ownership Values and Status

We found family land to be very important across generations, especially for land obtained by ancestors during times of slavery and Reconstruction, and an intense desire for future generations to retain family land. Eighty percent of the interviewees had at least some inherited land, and the depth and strength of attachment to family land were notable. Interviewees told stories of childhood experiences on the land, often about working on the family farm but also enjoying the freedom of rural life in fields, forests, and streams. These early experiences played a key role in forming identity and character among many interviewees, which led to strong attachments to family land and the memories of ancestors and experiences associated with them.

Rooted in memories, land was often viewed as an intergenerational family resource. People acknowledged and sought to honor the hard work their ancestors had undertaken to buy and hold on to land during times when this was difficult for African Americans in the U.S. South. The message to "never sell the land" had often been passed down for generations and was repeated to upcoming generations. Landowners were often trying to resolve land ownership issues and bring the land under management for the benefit of future generations as well as for themselves. For many families, there was an unwritten rule that if you needed to sell family land, you sold it to another family member. And many family members were prepared to buy

[3] African-American and White landowners in the Southern United States are very similar in education levels (Butler et al. 2016).

Table 2—Characteristics, ownership, and productivity of family land ownerships ≥10 acres (n=60)

	Number	Percent
Acres held		
<20	8	13.3
21–50	15	25.0
51–100	16	26.7
101–500	21	35.0
Tenure		
Title	36	60.0
Heirs' property	16	26.7
Both[a]	8	13.3
How land was obtained		
Purchase	11	18.3
Inherit	39	65.0
Combination	9	15.0
No response	1	1.7
Productivity		
Makes money	7	11.7
Costs money	32	53.3
About even	15	25.0
No response	6	10.0

[a] Some families had parcels of both titled land and heirs' property.

any such land, even if it was financially difficult, in order to keep it in the family. Landowners reported efforts, with varying degrees of success, to involve future generations with the land and reinforce the importance of keeping family land, although urban jobs and lifestyles at times made this difficult.

The difficulties of managing land that was heirs' property, as well as the difficulties of resolving ownership issues, were widely acknowledged. The number of owners of individual heirs' property parcels was at times large; the highest reported number was "around 200 co-owners," although the number involved in decision making was typically in the single digits because there were generally designated representatives for each family line. Resolving heirs' property begins with constructing a family tree and contacting all family members and generally requires the assistance of an attorney. While several interviewees had resolved ownership issues prior to the pilot projects, it was more common for them to be planning or just beginning to work with pilot project attorneys. The acquisition of signatures of all co-owners of heirs' property is legally required for many forestry activities, which makes timber sales difficult and participation in government assistance programs typically not possible for heirs' property owners. Equitable payment of property taxes by all heirs was often an issue; frequently heirs who live on the land or have been paying property taxes feel more entitled than other heirs to make land management decisions, although the entire property is actually held in common by all heirs. This can create discord and inhibit agreement about a path forward.

Forest Management

The landowners we interviewed in 2014 generally had very limited experience with forest management (table 3). The history of family land use was generally farming, often a style of small-scale family farming that is no longer viable. Cutting firewood for home heating and selling timber were common activities, with about half of interviewees having sold timber at some point. The most common strategy for managing forest lands in the past was allowing them to naturally regenerate, investing little or nothing in management, and then harvesting when cash was needed or when approached by a timber buyer. Only about 27 percent of landowners indicated that trees had been planted on their land, reducing future timber yields. Interviewees often felt that they or their parents had not been paid a fair price for their timber in the past. Fire is an important management tool for southern pine forests, yet very few study participants had formally engaged in prescribed burning (13 percent reported doing some burning). Concerns about past shortfalls from timber sales

Table 3—Experience of family land owners (≥10 acres) with forest management activities and assistance programs (n=60)

	Number	Percent
Activities		
Tree planting (yes)	16	26.7
Tree planting (no)	44	73.3
Burning (yes)	8	13.3
Burning (no)	52	86.7
Thin or harvest (yes)	31	51.7
Thin or harvest (no)	29	48.3
Use of cost share		
Yes (before program)	9	15.0
Yes (after program began)	9	15.0
Applied (after program began)	1	1.7
No	41	68.3
Forest management plan		
Yes (before program)	7	11.7
Yes (after program began)	7	11.7
In process	13	21.7
No	33	55.0

and desires to obtain greater returns in the future were widespread, motivating people to learn more and share experiences about forest management.

Most landowners had not participated in any government assistance programs[4] prior to beginning to work with the pilot project [15 percent had participated prior to the program, and 15 percent since the program started (table 3)]. Many indicated that they had little awareness of these programs. There were, however, several interviewees who had participated in some part of an assistance program at some point themselves or had witnessed their parents' participation in one. Several had made efforts of their own to become involved in programs, often with difficulties and frustration, but showing high levels of determination and persistence. A number of landowners had recently become interested in applying through the SFLR program, and many were applying or preparing to apply.

Only 12 percent of landowners interviewed had a written forest management plan prior to the advent of the pilot project (table 3). However, an additional 12 percent had recently obtained a management plan working with the SFLR, and 22 percent were in some stage of obtaining one. Experiences with forestry information prior to the initiation of the pilot project varied widely. Several people indicated that they had sought help from relatives employed in logging or forest products businesses, but that they often did not receive the information that they needed. Because of labor specialization in the industry, it appears that even contacts working on logging crews or at mills were rarely able to provide all the information that landowners needed. Several landowners previously had trusted sources of forestry advice and other information, either through extension agents or university personnel, but these relationships tended to be with one specific trusted individual and were easily lost with transfers or retirements. For the most part, awareness of and participation in landowner organizations was very limited. Only three landowners reported belonging to one, and many knew little about them; as one said, "I never heard about there being ones we could join." If landowner organizations were mentioned, it was usually the community-based organization carrying out the pilot project.

Forestry experience was rare, and many landowners felt that they and their families had been kept away from information and programs and therefore lagged behind other landowners. For many owners, the SFLR was their first opportunity to become fully involved in forest management. The forestry program was seen as key to involving the larger African-American community with the land and retaining land for future generations. Many landowners were just beginning to focus on their land and its management after years of inattention. The responses of these landowners revealed deliberate processes of information gathering, family discussions, and decision making that highlight the fact that people are making long-term decisions about a significant economic asset and place with meaningful ties to family history. Although the program was inspiring them to undertake this effort and helping them through this process, our observations suggested that progress takes time and requires sustained assistance as people need to learn about their options for land management, attempt to come to family agreement, learn more about the legal implications of customary land ownership patterns, become educated about forest management and the forest industry, decide which providers to trust, fulfill requirements for applications for assistance from various State and Federal programs, and develop and implement management plans.

Synergies Between Forestry and Heirs' Property

Obtaining clear title allows full participation in timber markets and government programs to improve and manage forests, and it also sets up a management structure that facilitates management and retention of land. In this process, landowners can choose to partition and manage land individually or to manage it collectively with a legal mechanism such as a trust or limited liability company (LLC). As noted above, family land often has deep meaning for family members; it is a tangible symbol of the hard work of ancestors, and both family history in the form of old home sites and cemeteries and personal childhood memories are embedded in these landscapes. The successes of the SFLR are the result of a multi-pronged approach to assisting families by simultaneously offering legal advice, providing genealogy assistance and family mediation services, educating family members about the benefits of establishing sustainable forestry practices on their land, and contributing technical assistance by local foresters (Schelhas et al. 2018). Efforts to simultaneously address heirs' property and forest management assistance were mutually reinforcing, with each facilitating the other.

The prospect of income generation from forestry activities, after title clearance, was often a great motivator for cooperation among family members. These dual activities demonstrate the synergies between resolving heirs' property issues and implementing sustainable forest management. Our 2016 and 2017 research shows that the prospect of turning land ownership from a liability to an asset can spur family members to reach out to other relatives and help them work together toward a common goal (Hitchner et al. 2017). In cases of heirs' property, one

[4] Forest management assistance programs play an important role for family forest owners by assisting with the substantial cost of establishing plantations that take several decades to provide significant economic returns.

or several co-owners often begin the process of resolution based on their more direct experience with and attachment to the land (Schelhas et al. 2018). Sometimes these family members have taken the initial steps of developing a forest management plan with assistance from Federal and State programs (Schelhas et al. 2018). In these cases, the more engaged individuals can bring a plan, and sometimes even an estimate of potential returns, to the family and thereby stimulate their interest and guide discussions. There are many differences among families, and some have a more difficult time coming to agreement than others. Yet, we have also observed that the geographical concentration of effort at each SFLR site results in landowners who achieve success more quickly because they serve as models and inspiration for their neighbors; these individuals also become actively engaged in peer-to-peer outreach to encourage and assist other families (Schelhas et al. 2018). The SFLR addresses factors that have led to heirs' property and limited engagement in forestry, while also helping families plan for a future that preserves important family legacies, increases families' engagement with land and forests, and produces multiple forest benefits such as income, recreation, wildlife, aesthetics, and hunting.

CONCLUSION

The SFLR has had considerable success. As of December 2017, 813 African-American landowners had engaged with the program. These landowners have a total of 65,447 acres (with an average landholding of 81 acres and a median of 40 acres), through eight projects in seven States. Specific outcomes attained include forest management planning; access to programs, loans, and financing; implementation of diverse forestry practices (e.g., thinning, harvest, site preparation, reforestation); improved marketing of forest products and other economic land uses (e.g., hunting leases); and education about heirs' property and legal assistance with its resolution through obtaining clear land titles. The research component of this project contributed to a more nuanced understanding of specific issues and challenges that African-American families face regarding land ownership. Baseline research provided a more precise demographic characterization of landowners (e.g., age, employment status, acreage owned); open-ended data on sentimental and cultural attachments to land, as well as current and past land management strategies; and information on landowner engagement with forestry practices and governmental land assistance programs (Schelhas et al. 2017a, 2017b). Followup research after about 4 years of program operation identified factors that were leading to success, such as an integrated program including integrated forestry and land ownership assistance, partnerships among agencies and organizations, and establishment of community networks (Schelhas et al. 2018).

In this paper we discuss how forestry outreach has played a key role in bringing attention to family land and helping families come together to resolve heirs' property conundrums. This process promises to increase the economic value of and income from the land, and this shift can reduce friction within families as well as overcome practical obstacles to retaining family land that is culturally important. The issue of heirs' property is pronounced among African-American landowners in the rural South, but it is by no means limited to them. It likely occurs wherever people have had limited access to and trust in the legal systems, which may include poor Whites in Appalachia, Hispanic populations in Texas and the Southwest, Native Americans where tribal common lands were allocated to individual families as a result of the Dawes Act and other allotment programs, and members of many of the same social groups who have migrated to urban areas. While the lessons of the SFLR are clearly directly relevant to rural forest land ownership, we believe that they also provide a larger lesson. Linking legal assistance for resolution of heirs' property to efforts to increase engagement with and productivity of land and property can stimulate a common future interest in land within families that both complements its heritage value and provides a stimulus for families to come together in new ways.

LITERATURE CITED

Birch, T.W.; Lewis, D.G.; Kaiser, F.H. 1982. The private forest-land owners of the United States. Resource Bulletin WO-1. Washington, DC: U.S. Department of Agriculture Forest Service. 64 p.

Butler, B.J.; Hewes, J.H.; Dickinson, B.J. [et al.]. 2016. USDA Forest Service National Woodland Owner Survey: national, regional, and State statistics for family forest and woodland ownerships with 10+ acres, 2011–2013. Res. Bull. NRS-99. Newtown Square, PA: U.S. Department of Agriculture Forest Service, Northern Research Station. 39 p.

Christian, C.S.; Fraser, R.F.; Gyawali, B.; Scott, C. 2013. Participation of minorities in cost-share programs: the experience of a small underserved landowners' group in Alabama. Journal of Sustainable Development. 6(4): 70–85.

Diop, A.; Fraser, R. 2009. A community-based forestry approach to poverty alleviation in Alabama's Black Belt region. International Forestry Review. 11(2): 186–196.

Dyer, J.F.; Bailey, C. 2008. A place to call home: cultural understandings of heir property among rural African American. Rural Sociology. 73(3): 317–338.

Dyer, J.F.; Bailey, C.; Van Tran, N. 2009. Ownership characteristics of heir property in a Black Belt county: a quantitative approach. Southern Rural Sociology. 24(2): 192–217.

Gan, J.; Kebede, E. 2005. Multivariate probit modeling of decisions on timber harvesting and request for assistance by African-American forestland owners. Southern Journal of Applied Forestry. 29(3): 135–142.

Gan, J.; Kolison, S.H., Jr. 1999. Minority forest landowners in southeastern Alabama. Southern Journal of Applied Forestry. 23: 175–178.

Gan, J.; Kolison, S.H., Jr.; Tackie, N.O. 2003. African-American forestland owners in Alabama's black belt. Journal of Forestry. 101(3): 38–43.

Gan, J.; Onianwa, O.; Schelhas, J. [et al.]. 2005. Does race matter in landowners' participation in conservation incentive programs? Society and Natural Resources. 18: 431–445.

Gilbert, J.; Sharp, G.; Felin, M.S. 2002. The loss and persistence of Black-owned farms and farmland: a review of the research literature and its implications. Southern Rural Sociology. 18(2): 1–30.

Gordon, J.S.; Barton, A.; Adams, K. 2013. An exploration of African American forest landowners in Mississippi. Rural Sociology. 78(4): 473–497.

Guffey, C.; Heitzman, E.; Williams, R. [et al.]. 2009. In their own words: perceptions of forestry among African-American forest landowners in Arkansas Delta. In: Ashton, S.F.; Hubbard, W.G.; Rauscher, H.M., eds. A Southern Region conference on technology transfer and extension. Gen. Tech. Rep. SRS-116. Asheville, NC: U.S. Department Agriculture Forest Service, Southern Research Station: 45–50.

Hamilton, J.; Fraser, R.; Schelhas, J. 2007. An evolving model of outreach and land management training for limited resources, minority landowners. In: Tackie, N.O.; Zabawa, R.; Baharanyi, N.; Hill, W., eds. Strategies to influence the 2007 Farm Bill and rural policies: impact on diverse cultures, rural communities and underserved farmers. Tuskegee, AL: Tuskegee University: 76–82.

Hilliard-Clark, J.; Chesney, C.E. 1985. Black woodland owners: a profile. Journal of Forestry. 83(11): 674–679.

Hitchner, S.; Schelhas, J.; Johnson-Gaither, C. 2017. African American forest landowners, heirs' property in the Southeastern U.S.: challenges and opportunities for small-scale sustainable forest management. Small Scale Forestry. 16(3): 395–417.

Hughes, G.; Measells, M.K.; Grado, S.C. [et al.]. 2005. Underserved forest landowner workshops: opportunities for landowners and extension. Journal of Extension. 43(4): 4FEA5.

Onianwa, O.O.; Wheelock, G.C.; Dubois, M.R.; Warren, S.T. 1999. Assessing the retention potential of Conservation Reserve Program practices in Alabama. Southern Journal of Applied Forestry. 23(2): 83–87.

Onianwa, O.; Wheelock, G.; Gyawali, B. [et al.]. 2004. An analysis of the factors affecting participation behavior of limited resource farmers in agricultural cost-share programs in Alabama. Journal of Agribusiness. 22(1): 17–29.

Reid, D.A. 2003. African Americans and land loss in Texas: government duplicity and discrimination based on race and class. Agricultural History. 77(2): 258–293.

Rivers, F.R. 2006. The public trust debate: implications for heirs' property along the Gullah Coast. Southeastern Environmental Law Journal. 15: 147–69.

Russell, D.; Harshbarger, C. 2003. GroundWork for community-based conservation: strategies for social research. Walnut Creek, CA: AltaMira Press. 336 p.

Schelhas, J.; Hitchner, S.; Dwivedi, P. 2018. Strategies for successful engagement of African American landowners in forestry. Journal of Forestry. 116(6): 581–588.

Schelhas, J.; Hitchner, S.; Johnson Gaither, C. [et al.]. 2017a. Engaging African American landowners in sustainable forest management. Journal of Forestry. 115(1): 26–33.

Schelhas, J.; Hitchner, S.; Johnson Gaither, C.; Jennings, V. 2017b. "Sunshine, sweat, and tears": African-American ties to land and forests in the South. Gen. Tech. Rep. SRS-220. Asheville, NC: U.S. Department of Agriculture Forest Service, Southern Research Station. 154 p.

Schelhas, J.; Zhang,V.; Zabawa, R.; Zheng, B. 2012. Exploring family forest landowner diversity: place, race, and gender in Alabama. International Journal of Social Forestry. 5(1): 1–21.

Wimberley, R.C.; Morris, L.V. 1997. The southern Black Belt: a national perspective. Lexington, KY: TVA Rural Studies. 49 p.

Zabawa, R. 1991. The Black farmer and land in South Central Alabama: strategies for preserving a scarce resource. Human Ecology. 19(1): 61–68.

Zabawa, R.; Siaway, A.; Baharanyi, N. 1990. The decline of Black farmers and strategies for survival. Southern Rural Sociology. 7: 106–121.

The Impact of Heirs' Property at the Community Level: The Case Study of the Prairie Farms Resettlement Community in Macon County, AL

Tristeen Bownes and Robert Zabawa

Abstract—Heirs' property, or land and other assets passed from one generation to the next without the benefit of clear title, has been described as a major impediment to individual and community development for African Americans, particularly in the rural South. While the reasons for heirs' property are many, including mistrust of the legal system and overt take-away schemes from local officials, little research has been conducted to examine the impact of heirs' property at the community level.

During the Great Depression of the 1930s, the U.S. government established, through the Resettlement Administration, racially segregated agricultural communities across the country, including approximately a dozen for African Americans in the rural South. While these Resettlement Communities provided new opportunities for the landless poor, over time, they have become part of the rural landscape, as other rural communities have, some continuing their agricultural pursuits and some disappeared, either into rural homesites or abandoned fields.

This research examines the impact of heirs' property on one of these communities, Prairie Farms, in western Macon County, AL. Results indicate that: (1) land once used for farming is now fractionated, or divided into small tracts, and used for non-agricultural and residential purposes; (2) there is an increase in the number of cases of heirs' property over time; (3) on average, heirs' property has a lower appraised tax value compared to titled property, with the major factor found in improvements to land, where land with clear title has a significant advantage; and (4) the residence of the landowner of record has an impact on the appraised tax value of the land. That is, owners and cotenants who live on or near the land tend to provide more improvements to the land that result in greater appraised value, as opposed to owners who live out-of-State who may find keeping up such improvements to be challenging. This is true for both property with clear title and heirs' property. Discernably, these results have implications for individual landowners as well as the communities where heirs' property is found.

Keywords: African Americans, Black Belt, heirs' property, resettlement community.

BLACK LAND IN HISTORICAL CONTEXT

Following the end of the Civil War, the cessation of slavery within the United States recognized the formerly enslaved as citizens, which also allowed them to pursue the rights of land ownership (U.S. Constitution Amendment XIV). Initially, the U.S. government promised freed people former Confederate lands to assist them during the transition out of slavery. However, this promise of "40 acres and a mule" never would come to fruition (Copeland 2013). Despite this empty government promise, and discrimination during post-Reconstruction, African Americans were still able to make substantial gains towards land ownership during the post-slavery era. Strategies to acquire land not only included relationships with White planters (Higgs 1982) but also the use of their own funds and extended kin networks (Penningroth 2003), and membership

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in regional associations such as the Colored Farmers' National Alliance and Cooperative Union (Reynolds 2002). Two important African-American leaders also played an important part in the acquisition of land by Black farmers. Booker T. Washington from Tuskegee Institute in Macon County, AL, was able to get support from northern benefactors to purchase large tracts of land and then re-sell to local farmers in 20- to 80-acre units (Zabawa and Warren 1998). And Robert Lloyd Smith of Texas, a disciple of Washington's, started the Farmers' Improvement Society of Texas that also provided access to land and banking support (Zabawa and Warren 1998). It was not until the 1930s and the advent of the Resettlement Administration during the New Deal that the U.S. government attempted another concerted effort to provide access to land for African Americans in the deep South.

Following the post-Reconstruction era, nearly 60 percent of employed African Americans were farm laborers or operated their own farms on their own lands (U.S. Department of Commerce 1913). By 1910, African Americans owned >15 million acres of land (U.S. Department of Commerce 1920). Over 920,000 African-American farmers represented 14.4 percent of all farmers within the United States and operated 3.2 percent of all land in farms (U.S Department of Commerce 1913). Land ownership allowed for increased personal and economic freedom. In addition, landowners were able to be civically engaged in their communities. Landowners also provided economic stability within their communities through contributions of property taxes and support for local business (Field 2000). Furthermore, landowners had greater political influence and were more likely to be politically active. This was evident during the Civil Rights Movement, when landowners were monumental figures in the movement or provided shelter for Civil Rights activists on their lands (Gilbert and Eli 2000).

While the ability to become a landowner allowed African Americans to have increased economic and political freedoms, it did not shield them from the vitriol from local White communities. The Associated Press' seminal three-part docu-series, "Torn from the Land," highlights methods used to forcefully strip African Americans from their properties (Lewan et al. 2001). Through testimony from former landowners and their descendants, the series underscores how Whites used violence, legal manipulation, and intimidation to steal land away from African Americans. In the most violent of cases, entire communities were destroyed as documented in the 2017 Public Broadcasting System program, "Banished: American Ethnic Cleansing" (Public Broadcasting System 2017).

Despite the alarming rate of farm ownership decline, government intervention did little to negate the problem. Instead, it further aggravated the problem by using discriminatory practices against African-American farmers (Daniel 2015). According to studies conducted by the U.S Commission on Civil Rights (1965, 1967), the U.S. Department of Agriculture (USDA) and several of its branches (Farmers Home Administration, Soil Conservation Service, Agricultural Stabilization and Conservation Service, and Cooperative Extension Service) purposely discriminated against African-American farmers by delaying loan allotments, decreasing loan sizes, and providing inadequate technical assistance. These forms of discriminatory practices against Black farmers are well documented in several bipartisan government reports well into the late 1990s and beyond (U.S. Commission on Civil Rights 1982; U.S. Department of Agriculture 1997, 2011). Despite the settlement of the class action lawsuit by African-American farmers against the USDA for maintaining such practices in the landmark case of *Timothy Pigford et al. vs. Dan Glickman* (1999), the USDA has yet to resolve a continued lack of participation in agency programs by African-American farmers. Recent research conducted in the Black Belt counties of Georgia found that African-American farmers continue not to use USDA programs due to lack of information, the feeling that they do not qualify, and negative past experiences with USDA personnel (Asare-Baah et al. 2018). The end result is that with past and continuing discrimination, coupled with structural changes in agriculture, an increasingly older farm population, and a move away from agricultural occupations, as of 2017, African Americans currently represent only 1.61 percent of all farmers, and 0.46 percent of land ownership in agriculture (USDA NASS 2017).

Although the above historical socio-political factors contributed to the decline of African-American-owned land, two culturally driven factors also contributed to African-American land loss. These factors were the division of land into smaller and smaller parcels, usually for homesites and too small to be of agricultural value, and, more significantly, heirs' property. Heirs' property refers to land that has been passed along to family members without a clear title or will (Zabawa et al. 1990). This form of property ownership contains constraints that prevent the land from being fully utilized towards the factors of production and results in land being potentially more vulnerable to loss than property with a clear title due to the complicated nature of ownership and sometimes the conflicting goals of cotenants. In order to fully understand the circumstances surrounding Black land loss, the nature of heirs' property must be fully understood as well.

ISSUES SURROUNDING HEIRS' PROPERTY OWNERSHIP

When a landowner dies *intestate* (without a probated will), the land is automatically transferred to his or her surviving spouse and children (Dyer et al. 2009). Each heir then receives a percentage of, or undivided interest in, the land based upon the number of heirs. This means that heirs will not receive a physically demarcated acreage. They will instead receive a specified amount of ownership interest in the land—although it will not be clear which portion of the land specifically belongs to them because all heirs have equal access to the entirety of the land. Referred to as *cotenants* or *tenants-in-common*, these descendants continue to pass down a fractionalized interest of the property to succeeding generations (Deaton et al. 2009). As each generation produces more and more heirs, the land is further fractionalized (Zabawa 1991). Often, the growth of land acquisition is not proportional to the growing number of heirs. As a result, the lack of a clear title makes it unclear who exactly owns the land; consequently, the land title becomes "clouded" (Pennick 2010).

Because cotenants only own a percentage of the property, not the entire property itself, they cannot leverage the title of the property to financial institutions for use as collateral. Since financial institutions cannot clearly identify the owners of the land, or how much of the land they own, heirs' property owners are viewed as extremely risky investments (Alabama Cooperative Extension 2008). In addition, because each cotenant has an undivided interest in the land, each cotenant has a right to all resources located on the property (regardless of the size of their share of interest in the land) (Deaton 2012). Therefore, the property cannot be legally utilized for economic gain without the consent of each individual cotenant.

As there are many barriers to optimal land use for heirs' property in comparison to property with clear title, the land is often underutilized or becomes a wasted resource (Deaton 2007). In a survey of 80 African-American farmers from seven Alabama Black Belt counties, significant differences in the use of resources appeared between those with heirs' property and those with land in clear title. Land in clear title was: (a) in the larger size categories, (b) in the higher value categories, (c) used in multi-year, long-term activities and investments, (d) considered more productive, and (e) considered as a larger investment (Baba et al. 2018). Heirs' property causes a decrease in generational wealth for cotenants. On an individual level, heirs' property is a hindrance towards creating generational wealth due to the fact that the land is essentially "dead capital" (de Soto 2000). This refers to capital that cannot be fully utilized towards the factors of production. De Soto further explains that the persistence of dead capital within any community further detracts from the potential of that community to improve community and economic development. Since the potential of this resource is unrealized, it aggravates existing poor economic conditions.

Persistence of heirs' property has historically been heavily concentrated where there are high levels of African-American populations and low corresponding indicators of economic development (Brooks 1983). Similar issues regarding land, title, and economic development have been found among other socially and economically disadvantaged groups including White Americans in Appalachia, Native Americans, and Hispanics/Latinos (see Johnson Gaither 2016 for a review of the literature). Pippin et al. (2017) developed a predictive methodology for locating heirs' property using Geographic Information System (GIS) technology and based on socio-demographic characteristics (including ethnicity/race, income, and education) and land-parcel characteristics.

In addition to impeding economic activity, this type of land ownership leaves landowners vulnerable to several methods of land loss. In particular, landowners are susceptible to land loss through tax sales and partition sales (Baab 2010).

In the case of heirs' property, it may not be as apparent which family member—if any—has decided to take responsibility for paying the property taxes on the land, which makes the property susceptible to tax sales. For heirs' property owners, it may be difficult to notify any of the family members if there are a large number of owners that live in various locations. Furthermore, if the family is notified, they may not have the ability to pay the taxes if members of the family do want to take collective responsibility (Deaton 2012).

Furthermore, cotenants that are disinterested in maintaining their interest in the land can sell their interest in the land, without consequence, to the remaining cotenants or an outside speculator (Mitchell et al. 2010). In particular, when a cotenant has sold his or her interest to a non-family member, the outsider can force the sale of the land through a partition sale. As previously mentioned, the difficulty of locating and contacting all cotenants influences the courts to order a partition sale rather than divide the land through partition in kind (Chandler 2005). When the land is sold by partition in kind, the property is divided equitably based upon the cotenants' fractionalized interest (Casagrande 1986). However, some portions of interest are so subdivided or exhibit topographical features that are physically impossible to divide. In addition, as heirs' property owners do not have specific acreages, it is unclear which portion of the land belongs to which cotenant. During the process of a contested partition sale, if the land cannot be equitably divided in a manner that

doesn't injure another cotenant, the entirety of land is sold at auction in a partition sale (Craig-Taylor 2000). This process is the easiest method for the courts to sift through the complicated dilemma of who owns which piece of the property. Therefore, the partition sale serves as the *default judicium* (Dagan and Heller 2001).

Cotenants can keep the land remaining in their family if they are able to either: a) successfully contest the sale through legal channels, or b) make the highest bid on the property at the auction (Thomas et al. 2004). However, the price of both legal fees and market value of land—even when it is sold below market value—is often too expensive for heirs' property owners. Cotenants, instead, share an equitable distribution of the profits from the sale. Consequently, those living on the land are displaced, and the family legacy is lost. Remaining cotenants may not have the financial capacity to contest the sale of the land or may not be informed in time that the land is up for partition sale (Thomas et al. 2004).

In addition to the restrictions and vulnerabilities of heirs' property, several myths concerning ownership and authority also exist. For instance, heirs' property owners that live on or near the land often mistakenly believe that they are more entitled to the land than heirs that live farther away. Or, they may falsely believe that their paying taxes equates to sole ownership. Yet, all cotenants are responsible for the financial obligations of the property. Taking over these financial obligations does not increase a cotenant's share in interest or authority over the land (Copeland 2015).

CULTURAL IMPACT OF HEIRS' PROPERTY

In comparison to property with clear title, heirs' property presents challenges for maximizing economic use, investment, autonomous use, and management. Even if a cotenant takes on the responsibility of managing or investing in the property, other cotenants still benefit from these investments (Dyer 2007). Similarly, heirs' property can remain idle for years without forms of property management or future plans for estate planning. As land is considered a valuable and scarce resource, the logical assumption would presume that heirs' property owners are better off selling the property for profit than continuing to hold on to dead capital. Since heirs' property impedes economic activity, is more vulnerable to land loss than titled property, and does not allow property owners to make autonomous decisions, this begs the question: Why do heirs' property owners continue to hold on to this land? What possible benefit can come from holdings of heirs' property?

Several scholars have indicated that the heirs' property holds more than economic value. It holds cultural and emotional meaning as well. In her book, *A Call to Home: African Americans Reclaim the Rural South,* author Carol Stack illustrates how the heirs' property is considered a safe haven for cotenants (1996). Within the first chapter, she establishes how cotenants of heirs' property are often poor and economically marginalized within their communities. However, even if they are poor, they are still landowners. In comparison to other members within the community who are poor *and* landless, cotenants still have a slight economic advantage over their landless counterparts. In addition, the land also provides shelter for displaced family members. Family members that have moved away from the community always have a place to return to if they are ever in need.

Dyer and Bailey (2008) also illustrate the same occurrence. The authors highlight instances in which heirs' property was not primarily utilized for economic use but held emotional meaning similar to what Stack examined over a decade earlier. In addition, the land also was the tether that kept families together, preserved family tradition, and was the origin of the family history (see Schelhas et al. 2017). Falk (2004) also noted that land held an especially emotional meaning for African Americans. As enslaved Africans, they were not permitted to be in control of themselves, much less formally own land. Therefore, land represented the ability to be in control of one's future. Falk states, "working the land, especially owning it…was a reflection of self-determination and freedom" (176–177). For these landowners, even though the land wasn't producing any economic benefit, the land was not any less valuable.

Furthermore, the creation of heirs' property was an unintended effect of protecting family lands caused by the distrust of the legal system, superstition of inviting death through writing a will, illiteracy, misinformation, and not having enough exposure to the estate planning process (Zabawa 1991, Zabawa and Baharanyi 1992). Therefore, the practice of foregoing the creation of a will has continued to persist with African-American landowners. The lack of estate planning by current cotenants further aggravates the issue of land loss throughout the African-American community. Consequently, heirs' property has become a common form of estate ownership within the African-American community (Craig-Taylor 2000). This trend has been highlighted by various studies starting with a regional project of 10 southeastern States by the Emergency Land Fund which found that 41 percent of Black-owned land was heirs' property (Brooks 1983, ELF 1980). A three-county study in North Carolina (Schulman et al. 1985), a USDA program study of a small sample of 26 farmers (Zabawa 1991), a five-county Alabama Black Belt study (Zabawa et al. 1994), and a coastal South Carolina study (Rivers 2006) found that 88, 69, 56, and 50 percent of Black-owned land was heirs' property, respectively.

THE PRAIRIE FARMS AFRICAN-AMERICAN AGRICULTURAL COMMUNITY

The case of heirs' property within the community of Prairie Farms is of particular importance due to its unique history compared to other communities within Macon County, AL. Prairie Farms was one of the New Deal Resettlement Administration projects instituted by President Franklin Roosevelt from 1933 to 1938 and only the second effort by the Federal government to actively provide land to African-American farmers since Reconstruction. Under the New Deal Resettlement Administration, agricultural communities were created by the Federal government to foster economic development in areas where there was virtually none (Pasquill 2008). While the majority of these communities were established for European-American farmers and their families, a small number were established specifically for African Americans in the Southern United States (Zabawa 2009) and a smaller number for "Spanish-Americans" in New Mexico and Colorado (Farm Security Administration 1944).

The Prairie Farms Resettlement Project was proposed in 1935. The original goal was to move subsistence farmers and sharecroppers from submarginal lands, wooden tenant shacks, and sporadic schooling for children in the eastern part of the county (fig. 1) to more desirable land and planned farming operations in the western part of the county. The initial plan was for the Federal government to purchase two large former plantation landholdings and create 75 farm units on 3,100 acres of land (fig. 2). Each unit would have its own farm and range from 41 to 135 acres (Zabawa and Warren 1998). These units had specified plots of land on which the residents would be able to produce commodities or animals in order to provide for their livelihoods. Due to budget cuts caused by Southern dissatisfaction with New Deal programs, reductions were made to Prairie Farms as funding dried up. In the end, there was a decrease in farm units—and sizing of units within the community— and only 34 families out of the originally 75 planned were able to relocate to Prairie Farms (see community farm plan in fig. 3). Four families, sharecroppers on the original land sold to the U.S. government, were already living on the land. When the first new families moved to Prairie Farms in 1937, all farm units had a house with electricity, a privy, a stable, pig pen, and poultry house. Also, a cooperative was formed, and the new school served the added functions as a health and community center (fig. 4) (Farm Security Administration 1941). In sum, the establishment of the Prairie Farms community provided its members with a stable agricultural economy based on land and a cooperative as well as a stable education system based on a project manager, cooperative extension outreach provided by Tuskegee Institute, and a project school with an extended school year.

Figure 1—Erosion in Macon County, AL. Photo by A. Rothstein, Library of Congress (http://www.loc.gov/pictures/item/2017775889/)

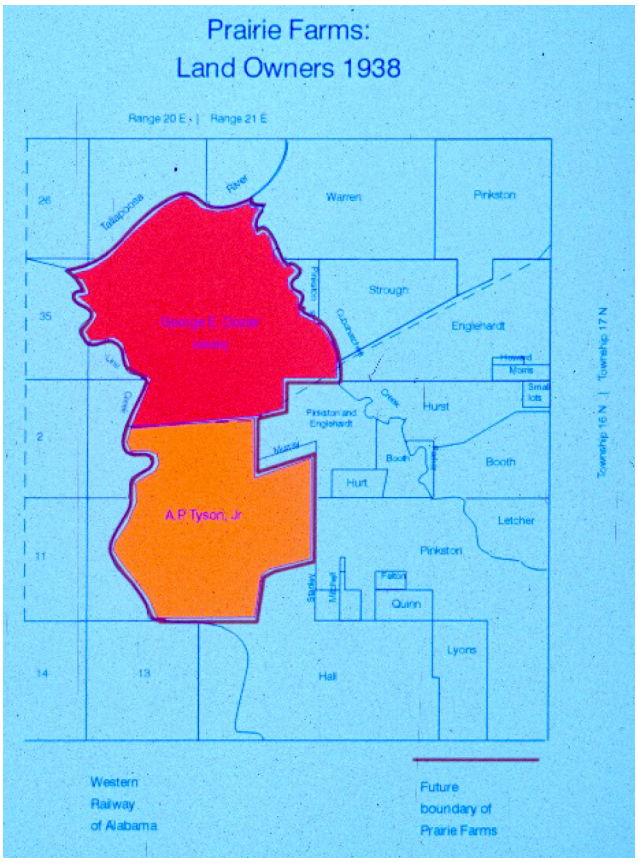

Figure 2—Map of original land converted into Prairie Farms Resettlement Community. Source: Zabawa and Warren (1998)

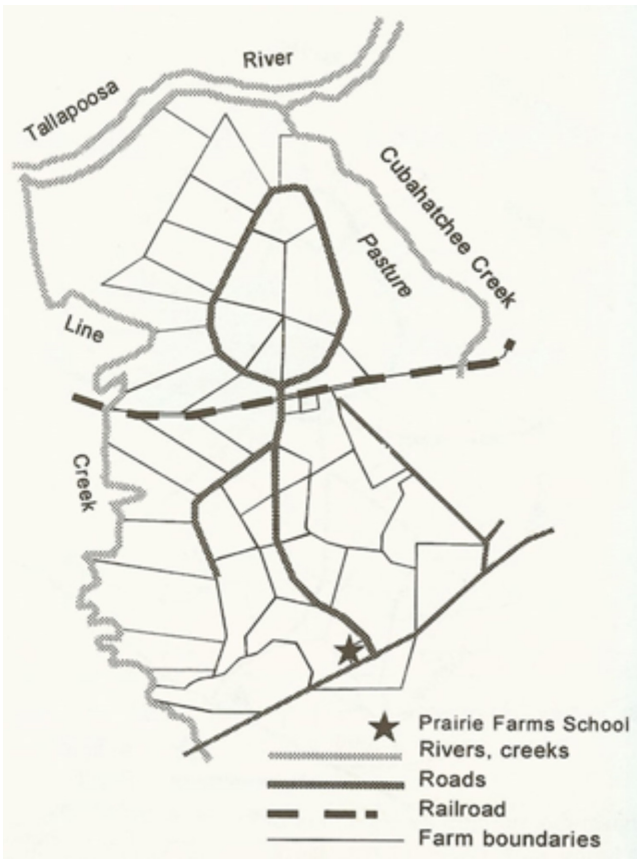

Figure 3—Map of Prairie Farms Resettlement Community. Source: Zabawa and Warren (1998)

Figure 4—New project house and other units, Prairie Farms. Photo by M.P. Wolcott, Library of Congress (http://www.loc.gov/pictures/item/2017800975)

In exchange for their new accommodations, African-American farm families agreed to a long-term mortgage from the U.S. government. The government expected these mortgages to be paid from the income generated from the farms on each unit. However, in the first year that Prairie Farms was established, most of the farm families were unable to provide sufficient income to sustain their livelihoods and financial obligations. According to Coleman Camp, the Community Manager of the Prairie Farms Project, "Only a small percentage of the Prairie Farms Homesteaders were able to meet their family obligations in 1938…. On Prairie Farms, we are confronted with the age-old problem, the 'one crop system' which makes for unbalanced farming, maldistribution of labor, and only one source of income; namely, cotton receipts." (Camp 1939). Yet, there was hope that, with time, Prairie Farms would eventually become a self-sustaining community. Unfortunately, by the outbreak of World War II, support for Prairie Farms and other Farm Security Administration programs diminished. By 1944, the 34 farm units in Prairie Farms were sold by the U.S. government to the resident farm families, with the last farms sold by 1951 (Farm Security Administration 1944, Zabawa 2009, Zabawa and Warren 1998). In terms of the Federal government's investment in Prairie Farms, a 1944 report indicated that the government would recoup all but $18,000 of its over $200,000 investment (Farm Security Administration 1944). At the same time, there was much emphasis placed on how the individual farms were obtaining deeds for the land, and the amount of farm production that went towards family needs (e.g., canning of fruits and vegetables, milk) was noted.

Despite the mixed results of this program, some notable successes were achieved. Primarily, an entire generation of sharecroppers and tenant farmers in Macon County, as well as at other Resettlement projects, were able to become landowners for the first time in their lives. Although the program may have had its failures, the ability to (a) become a landowner and access all the privileges of land ownership and (b) pass land on to future generations may have been the program's greatest, if only, success (Warren and Zabawa 1998).

METHODS

This research focused on two areas: (1) whether land that was once agricultural in nature changed through time, for example from agricultural to residential or commercial; and (2) the impact the status of heirs' property had, if any, on the market value of the land [i.e., Was heirs' property treated differently by the landowners than property with clear title (e.g., the ability to add improvements such as a house or uses that might improve the investment value), and was this difference reflected in its appraised value? It has been noted before that heirs' property has value outside of pure economic use (see Dyer and Bailey 2008, Schelhas et al. 2017, Stack 1996)].

The case study of Prairie Farms was selected for its location within Macon County, the persistence of heirs' property within the community, and its history as a former Resettlement Community. From the community's condition today, it is clear that Prairie Farms was unable to live up to the ideal of becoming a self-sustaining agricultural community. Currently, Prairie Farms is occupied by a conglomeration of new houses, trailer homes, and lone-standing chimneys where original houses once stood (fig. 5). Some of the original farms have been consolidated into bigger farms, while others have been further fractionalized into homesites, with examples of heirs' property and clear title in both cases. While few agricultural activities persist here, the prevalence of heirs' property may be a contributing factor to the decline in agricultural activity within this area. In addition, it is possible that the pervasiveness of heirs' property may also be hindering the resurgence of economic activity. This research seeks to ascertain the potential economic impact of heirs' property on the appraised value of land. Specifically, this research analyzes the ways in which heirs' property decreases land value, and the relationship between landowner residence and land value.

In order to determine the presence of heirs' property in Macon County, tax data were accessed from the Macon County Revenue Commissioner's office. Initially, a search of the term "heirs of" within the Revenue Commissioner's taxpayer database allowed for all parcels with an heirs' property status to be identified within the county (Macon County Revenue Commissioner's Office N.d.). Gilbert et al. (2002) explain that heirs' property is not categorized in a uniform manner across tax systems for different counties. For instance, some counties may denote heirs' property within the taxpayer's name, followed by the term "heirs of," "estate of," or "et al." based on the preference of the tax assessor or county clerk (Pippin et al. 2017). Some counties may not even categorize any of the land as heirs' property within a tax database query. Bailey et al. (2019) and Dyer et al. (2009) suggest that the most complete record of heirs' property is obtained through a combination of digital records and courthouse document searches.

Figure 6 shows the location of Macon County in Alabama as well as the heirs' property in Macon County (in green) and the Prairie Farms community (as indicated within the purple borders). Once identified, the data were separated into several categories: land type (heirs' property or titled property), total number of owners or ownership entities (groups of more than one heir), total number of acres, and total value of acres. The appraised value of land was determined by the county Revenue Commissioner's office. In Macon County, land is classified according to various

Figure 5—Prairie Farms today. Pictured is a new house next to a project house. Photo by R. Zabawa, Tuskegee University

uses (e.g., agricultural, forestry, residential, commercial), and, in many cases, the appraised value is lower than the market value. Additionally, the land value is then divided into categories of improved value and total value, where total value is land value plus improved value. Average acres and values were then calculated.

A final variable that was considered to have an impact on land value was residence of the landowner. Landowner residence was categorized as: the landowner lived in the county of the land owned; the landowner lived out of the county but within the State of Alabama; or the landowner lived outside the State of Alabama. This variable was based on the hypothesis that the farther away the landowner lives from the land owned, the less likely are improvements to the land through agriculture-based production or program participation or through the building of physical structures such as fences and buildings, including barns and homes. Importantly, a contemporary study by Patterson (2018) in the Resettlement Community of Gee's Bend in Wilcox County, AL, used similar methodology and had similar results.

RESULTS AND DISCUSSION

Heirs' Property, Titled Property, and Fragmentation

Table 1 highlights land changes that have resulted over the years from the farm units created at Prairie Farms by 1940 to the present day. In terms of numbers, the original Resettlement Community was based on 37 farms on 3,000 acres. By 1996, the number of landowners had increased to 194, and currently there are 138 landowners or land-owning entities at Prairie Farms, reflecting some land consolidation. It should be noted that these numbers reflect the heirs (cotenants) of record, that is, where the tax bill is sent. The actual number of heirs is much higher. Relatedly, the land at Prairie Farms has undergone fragmentation, from 37 farm tracts in the 1940s, to 262 tracts in 1996 to 211 tracts currently, reflecting a transition from agriculture to residences or homesites, as well as a consolidation of some tracts as well. Table 1 also highlights the advent of heirs' property as original landowners die without wills. As recorded in the county Revenue Commissioner's office, heirs' property does not appear until the 1970s with two cases. This number jumps to 26 in the 1990s and it remains in the 20s currently. Finally, heirs' property is compared to titled property in table 1. While there have been more owners and tracts of titled property versus heirs' property, it is significant that the average heirs' property holding is larger (55.5 acres versus 13.8 acres). In the case of Prairie Farms, there is a higher percentage of intact farm units as heirs' property. On the other hand, there are more home sites, from divided former farm sites, that are under clear title, thus the smaller average acreage. This is not surprising given that, to obtain a mortgage for a house, the landowner most likely has a clear title to the land. Although the larger tracts have more agricultural production potential, unfortunately, the fact that they are heirs' property means that they are limited in terms of application of USDA programs or collateral value.

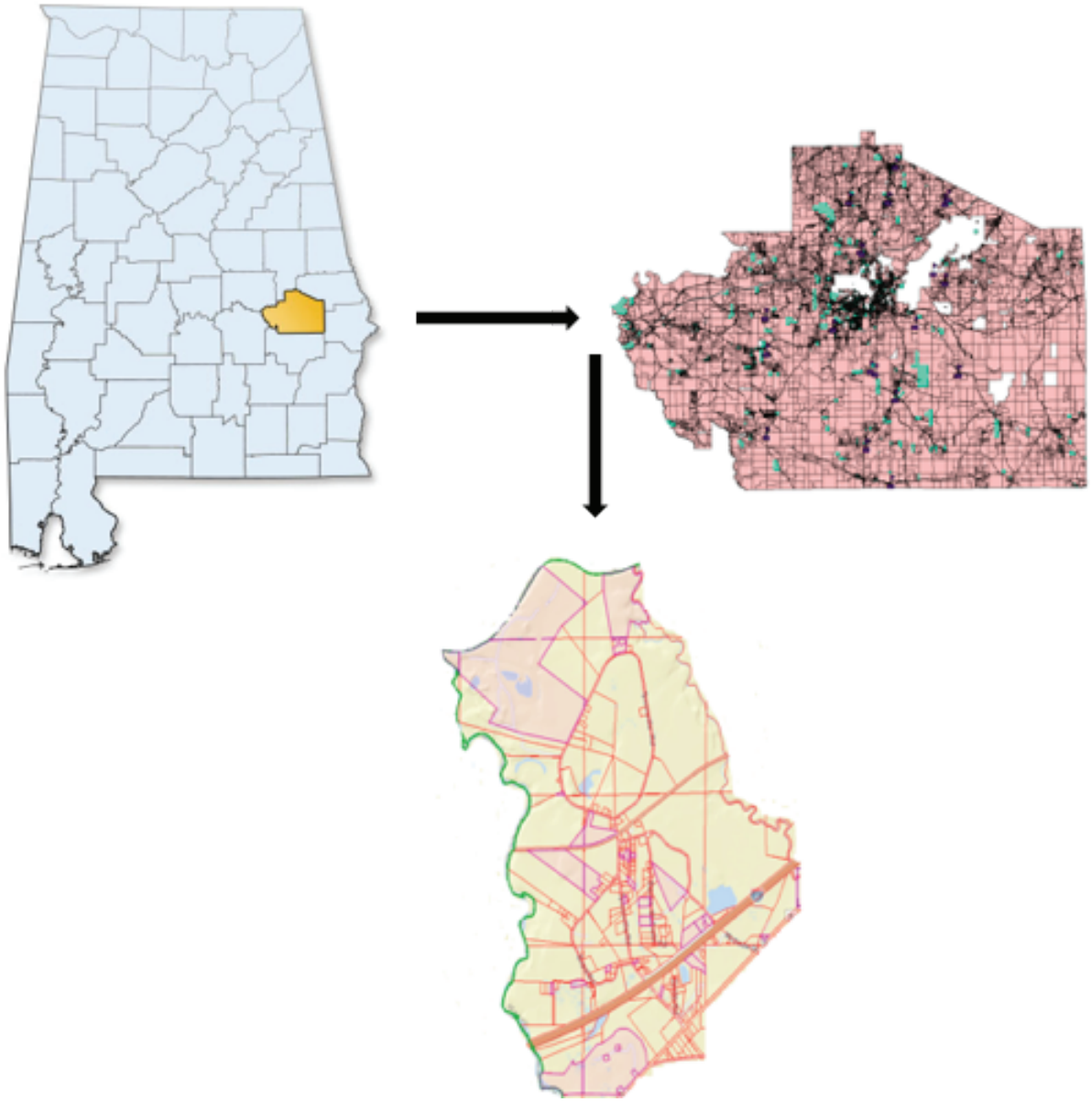

Figure 6—(A) Location of Macon County, AL; (B) heirs' property in Macon County (shown in green); (C) Prairie Farms heirs' property (shown in purple).

Table 1—Changes in land ownership at Prairie Farms, 1940–2016

	1940	1946	1976	1996	2016
TOTAL					
Owners	37	37	119	194	138
Tracts	37	87	194	262	211
Acres	2,998[a]	3,208	3,105	3,027	2,859
Average acres per owner	63.2	86.7	26.1	15.6	20.7
HEIRS' PROPERTY					
Owners[b]	0	0	2	26	23
Tracts	0	0	8	45	50
Acres	0	0	464	1,105	1,277
Average acres per owner	0	0	232	42.5	55.5
TITLED PROPERTY					
Owners	37	37	117	168	115
Tracts	37	87	186	237	161
Acres	2,998	3,208	2,641	1,922	1,583
Average acres per owner	63.2	86.7	22.6	11.4	13.8
HEIRS' PROPERTY/TOTAL					
Owners (*percent*)	0	0	1.7	13.4	16.7
Tracts (*percent*)	0	0	4.1	17.2	23.7
Acres (*percent*)	0	0	14.9	36.5	44.6

[a] This total includes two pastures of 431 and 230 acres.

[b] Heirs' property "owners" represent ownership entities and not necessarily individual owners.

Landowner Residence: In-County, Out-of-County/ In-State, Out-of-State

Within the community of Prairie Farms in 2016, 161 tracts were owned as titled property, while 50 tracts were heirs' property, for a total of 211 tracts. Of those titled tracts, 106 were registered to landowners who resided within Macon County (65.8 percent), 37 were registered to landowners who resided outside of Macon County but in-State (23.0 percent), and 18 were registered to landowners who resided out-of-State (11.2 percent) (fig. 7; table 2, column 2).

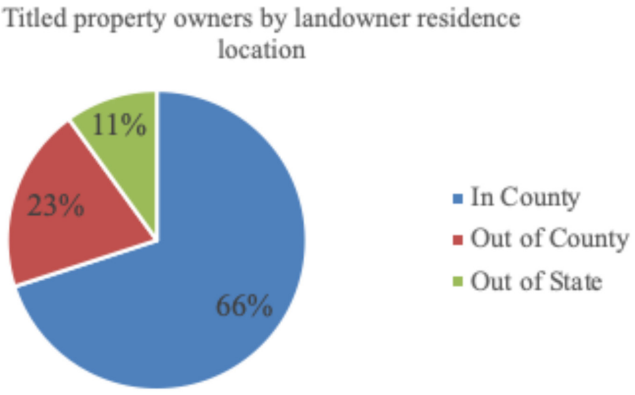

Figure 7—Titled property owners by landowner residence location, Prairie Farms, AL.

Correspondingly, 33 of the 50 tracts of heirs' property were registered to landowners who resided in Macon County (66.0 percent), 5 tracts were registered to landowners who resided outside of Macon County but in-State (10.0 percent), and 12 tracts were registered to landowners who resided out-of-State (24.0 percent) (fig. 8; table 2, column 2). For titled property owners, the majority of tracts were registered to landowners who lived within Macon County, followed by those who lived outside of the

Table 2—Total Prairie Farms appraised land values, titled property versus heirs' property, by landowner residence, in 2016

LAND VALUES	1 Owners (*number*)	2 Tracts (*number*)	3 Area (*acres*)	4 Appraised land value (*dollars*)	5 Appraised improved value (*dollars*)	6 Total appraised value (*dollars*)
TITLED PROPERTY						
In-county	81	106	851.38	1,843,030	3,248,560	5,091,590
Out-of-county/in-State	23	37	403.69	793,620	204,301	997,921
Out-of-State	11	18	327.41	621,340	52,380	673,720
TOTAL	115	161	1,582.48	3,257,990	3,505,241	6,763,231
HEIRS' PROPERTY						
In-county	14	33	731.64	1,350,300	355,220	1,705,520
Out-of-county/in-State	4	5	8.00	21,800	17,100	38,900
Out-of-State	5	12	536.80	926,700	2,720	929,420
TOTAL	23	50	1,276.44	2,298,800	375,040	2,673,840

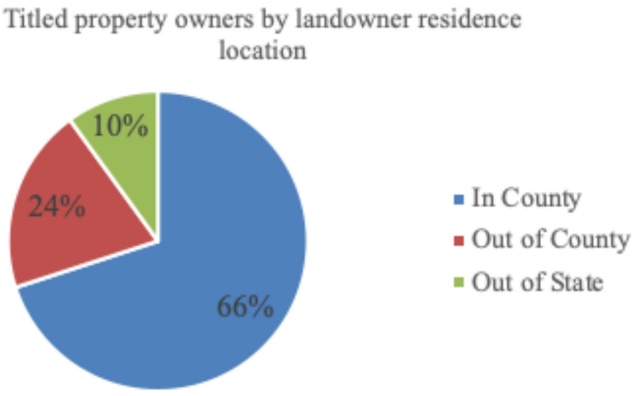

Figure 8—Heirs' property owners by landowner residence location, Prairie Farms, AL.

county but in-State, and then those who lived out-of-State. Heirs' property owners followed the same trend for tracts registered to in-county owners, though there were more tracts registered to out-of-State owners than out-of-county/in-State owners.

Table 2 also highlights the total number of acres by titled property versus heirs' property as well as the residence location of the registered landowners in 2016. The total amount of acres owned within Prairie Farms was 2,858.92 acres. Of those, titled property landowners owned 1,582.48 (55.4 percent) acres, and heirs' property owners owned 1,276.44 acres (44.6 percent). Titled property owners who resided in Macon County owned the largest amount of land, 851.38 acres (53.8 percent); those who resided outside of Macon County but in-State owned 403.69 acres (25.5 percent); and those who resided out-of-State owned 327.41 acres (20.7 percent). Heirs' property owners who resided within Macon County owned 731.64 acres (57.3 percent); those who lived outside of Macon County but in-State owned the smallest amount, 8.00 acres of land (0.6 percent); and those who resided out-of-State owned 536.80 acres (42.1 percent).

With respect to land value, the appraised value of land within Prairie Farms was $5,556,790 (see table 2, column 4). The land value of titled property within Prairie Farms was $3,257,990, while total heirs' property acreage was appraised at $2,298,800. Table 2 also highlights that the majority of titled land value is found when the owners live in-county ($1,843,030), as opposed to living out-of-county but in-State ($793,620) or out-of-State ($621,340). This is also true for the value of heirs' property when owners live in-county ($1,350,300), compared to landowners who live out-of-county but in-State ($21,800), or out-of-State ($926,700). The extremely small number of out-of-county/in-State owners makes this distinction less significant. The impact of titled versus heirs' property is highlighted in the category of "improved value" (table 2, column 5). In this case, improvements include houses, farm structures, and permanent changes to the landscape. For land with clear title with in-county owners, the improvement value ($3,248,560) is 176 percent of the value of the land itself. For owners who live out-of-county but in-State, the improvement value ($204,301) is 26 percent of the land value; for out-of-State owners, the improvement value ($52,380) is 8 percent of the land value. Heirs' property follows the same trend with more improvement value for land with in-county ownership at $355,200, versus out-of-county/in-State ownership at $17,100 and in-county/out-of-State ownership at $2,720. The percent-to-land value

of heirs' property was lower than that of land with clear title for in-county owners (26 percent) and out-of-State owners (0.3 percent) but not for the out-of-county/in-State owners (78 percent), though the small number and acreage of this group may be an influence. In sum, for owners of land with clear title, improvements to land represent 108 percent of the appraised value of land and 52 percent of the total appraised value of land (table 2, column 6), while for owners of heirs' property, improvements to land represent 16 percent of the appraised value of land and 14 percent of the total appraised value of land.

These results are further highlighted in table 3 where the data are presented in an average or per-acre format. The average appraised value per acre of titled property was $2,059. The average appraised value per acre of heirs' property was $1,801. For titled property owners residing within Macon County, the average appraised value of land per acre was $2,165. For titled property owners residing out of Macon County but in-State, the average value per acre of land was $1,966. Titled property owners who resided out-of-State had the lowest average value per acre of land at $1,898. Heirs' property owners who resided in Macon County had the average appraised value per acre of land of $1,846. For heirs' property owners who resided outside of Macon County but in-State, the average appraised value per acre of land was $2,725. Heirs' property owners who lived out-of-State had the lowest average value per acre of land, with an appraised value of $1,726. In sum, for titled property, the trend was that land owned by in-county residents was appraised higher than that owned by out-of-county/in-State residents, which was appraised higher than land owned by out-of-State residents. For heirs' property owners, again the results are mixed, with out-of-county/in-State owners having the highest per-acre value followed by in-county and out-of-State owners.

Table 3 also highlights the average improvement value per acre by landowner residence. Again, as in average land values, the improvement values of titled property acres with in-county owners were highest at $3,816, followed by those with out-of-county/in-State owners at $506 and out-of-State owners at $160. Heirs' property generally followed the same trend, with improvement values averaging $486 per acre when heirs' property owners lived in the county and $5 per acre for heirs' property with out-of-State owners. The relatively small number of tracts and acreage owned by out-of-county/in-State owners did not follow this trend. In general, improvements, as expressed by assessed improved value, to titled property were greater than improvements to heirs' property, regardless of the residence of the landowner. The highest assessed improved values for titled property registered to in-county residents makes sense, given that the local owners would use and invest in the improvements more readily.

SUMMARY AND CONCLUSIONS

Understanding African-American land ownership, and more specifically, land loss, is critical to understanding the lack of economic and political participation and well-being of vast sections of communities across the rural South. Whether by racially discriminatory practices at the courthouse door or probate office, or by a lack of effective Federal programs, the inability to create a land-based class of agricultural entrepreneurs impeded the economic development of the region in general and of African-American communities in particular.

Table 3—Average Prairie Farms appraised land values per acre, titled property versus heirs' property, by landowner residence, in 2016

LAND VALUES	1 Owners (*number*)	2 Tracts (*number*)	3 Area (*acres*)	4 Appraised land value (*dollars*)	5 Appraised improved value (*dollars*)	6 Total appraised value (*dollars*)
TITLED PROPERTY						
In-county	81	106	851.38	2,165	3,816	5,980
Out-of-county/in-State	23	37	403.69	1,966	506	2,471
Out-of-State	11	18	327.41	1,898	160	2,058
AVERAGE				2,059	2,215	4,274
HEIRS' PROPERTY						
In-county	14	33	731.64	1,846	486	2,331
Out-of-county/in-State	4	5	8.00	2,725	2,138	4,863
Out-of-State	5	12	536.80	1,726	5	1,731
AVERAGE				1,801	294	2,095

Prairie Farms was created during the New Deal to provide landless and tenant-farming African Americans the opportunity for independence through the acquisition of land. Over the succeeding four generations, the original farmsteads have changed to a mixture of abandoned fields, smaller tracts, residential units, and land leased for mining, with much of this land, 45 percent, held as heirs' property. This research examined how these changes influence the appraised value of the land. This is important for two main reasons. First, land status, i.e., land with a clear title versus heirs' property, impacts how the land may be used and even lost. Property with a clear title may be used as collateral for home, equipment, or other improvement loans. It is also open for USDA program participation. Heirs' property, on the other hand, may not be used for financial or other productive means without the consent of all the co-heirs, an often arduous task, if multiple generations of heirs are considered. Moreover, because the title is not clear, heirs' property may be more vulnerable to tax and partition sales.

Second, in terms of land value, there was a significant difference between titled property and heirs' property based on landowner residence. Titled property owned by in-county residents had a total appraised value, on average (including improvements), that was over twice the value of land owned by out-of-county/in-State residents, which was valued slightly above land owned by out-of-State residents. The same trend is hypothesized for heirs' property owners but was not found due to a small sample of landowners in this category. At the same time, land with owners residing outside of the State was appraised at the lowest value as predicted. Finally, a major contributing factor to this difference is the average improvement value of the land. More improvements were made by owners who lived in-county, followed by owners who out of lived out-of-county/in-State, followed by owners who lived out-of-State.

Our findings suggest that landowners invest in what they can control (property with clear title versus heirs' property), and they invest in assets to which they have greater access in terms of physical distance. These conclusions have both economic and political ramifications. Economically, owners of heirs' property are not able to reap the full benefits of land ownership, either as a productive resource or as an investment. Research by Dyer et al. (2009) and Baab (2010) has focused on the total value of land that is heirs' property. In Prairie Farms, this number is significant, at close to $2.7 million, for a small agricultural community in decline. If the owners of heirs' property cannot reap similar benefits off the land as their counterparts with clear title, this also affects the community at large as well. Farms cannot be improved, declining houses are replaced by mobile homes because mortgages cannot be obtained, local governments cannot get the benefits of increased property taxes, and local venders cannot get the benefits of local sales from increased farm production. Finally, politically, it was noted that the second largest category of heirs' property owners lived out-of-State. This means that these owners are unable to participate in any kind of legislation, including property tax laws that might affect the land. It is through highlighting the risks involved in maintaining heirs' property versus the benefits of clearing title to property that both individual landowners and community governments may be able to act in their own best interests.

ACKNOWLEDGMENTS

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LITERATURE CITED

Alabama Cooperative Extension System. 2008. Heir property in Alabama. HE-0852. 31 p.

Asare-Baah, L.; Zabawa, R.; Findlay, H. 2018. Participation in selected USDA programs by socially disadvantaged farmers in selected Black Belt counties in Georgia. Journal of Rural Social Sciences. 33(1): 32–55.

Baab, C. 2010. Heirs' property ownership: an untapped asset for low-wealth Americans and local governments. State and Local Law News. 33(4): 1–15.

Baba, A.; Zabawa, R.; Zekeri, A. 2018. Utilization of property among African American heir and titled landowners in Alabama's Black Belt. Review of Black Political Economy. 45(4): 325–338.

Bailey, C.; Zabawa, R.; Dyer, J. [et al.]. 2019. Heirs' property and persistent poverty among African Americans in the Southeastern United States. In: Johnson Gaither, C.; Carpenter, A.; Lloyd McCurty, T.; Toering, S., eds. Heirs' property and land fractionation: fostering stable ownership to prevent land loss and abandonment. June 15, 2017, Atlanta, GA. e-Gen. Tech. Rep. SRS-244. Asheville, NC: U.S. Department of Agriculture Forest Service, Southern Research Station: 9-19.

Brooks, J. 1983. Black farmers and rural heir property owners: public policy response. Increasing Understanding of Public Problems and Policies. 1983:76–83. https://ageconsearch.umn.edu/record/17675?ln=en. [Date accessed May 29, 2019].

Camp, C. 1939. Progress report Prairie Farms Project. Correspondence to Will Alexander, Administrator, Farm Security Administration. April 20, 1939. Reproduced at the National Archives, Record Group 96, Records of the Resettlement Administration, RP, AL-28, 183-04. 9 p.

Casagrande, J. 1986. Acquiring property through forced partitioning sales: abuses and remedies. Boston College Law Review. 27(4): 755–783.

Chandler, A.B. 2005. "The loss in my bones": protecting African American heirs' property with the public use doctrine. William & Mary Bill of Rights Journal. 14 (1): 387–414.

Copeland, R.W. 2013. In the beginning: origins of African American real property ownership in the United States. Journal of Black Studies. 44(6): 646–664.

Copeland, R.W. 2015. Heirs' property in the African American community: from promised lands to problem lands. Professional Agricultural Workers Journal. 2(2): 1–9.

Craig-Taylor, P. 2000. Through a colored looking glass: a view of judicial partition, family landloss, and rule setting. Washington University Law Review. 78(3): 737–788.

Dagan, H.; Heller, M. 2001. The liberal commons. The Yale Law Journal. 110(4): 549–623.

Daniel, P. 2015. Dispossession: discrimination against African American farmers in the age of civil rights. Chapel Hill: University of North Carolina Press. 352 p.

de Soto, H. 2000. The five mysteries of capital. In: The mystery of capital: why capitalism triumphs in the West and fails everywhere else. New York, NY: Basic Books: 6–7.

Deaton, B.J. 2007. Intestate succession and heirs' property: implications for future research on the persistence of poverty in Central Appalachia. Journal of Economic Issues. 41(4): 927–942.

Deaton, B.J. 2012. A review and assessment of the heirs' property issue in the United States. Journal of Economic Issues. 46(3): 615–632.

Deaton, B.J.; Baxter, J.; Bratt, C. 2009. Examining the consequences and character of "heirs' property". Ecological Economics. 68(8): 2344–2346.

Dyer, J.F. 2007. Heirs' property: legal and cultural dimensions of collective landownership. Bulletin 667, May 2007. Auburn, AL: Alabama Agricultural Experiment Station. 38 p.

Dyer, J.F.; Bailey, C. 2008. A place to call home: cultural understandings of heirs' property among rural African Americans. Rural Sociology. 73(3): 317–338.

Dyer, J.F.; Bailey, C.; Van Tran, N. 2009. Ownership characteristics of heirs' property in a Black Belt county: a quantitative approach. Southern Rural Sociology. 24(2): 192–217.

Emergency Land Fund [ELF]. 1980. The impact of heirs' property on Black rural land tenure in the Southeastern region of the United States. [Place of publication unknown]: The Fund. 569 p.

Falk, W.W. 2004. Rooted in place: family and belonging in a southern Black community. New Brunswick, NJ: Rutgers University Press. 232 p.

Farm Security Administration. 1941. Report, "Prairie Farms". Washington, DC: U.S. Government Printing Office. [Number of pages unknown].

Farm Security Administration. 1944. Hearings, "Select committee of the House Committee on Agriculture, to investigate the activities of the Farm Security Administration". Washington, DC: U.S. Government Printing Office. 1182 p.

Field, E. 2000. The decline of Black-operated farms in North Carolina: toward a clearer understanding of the problem. Durham, NC: Duke University. [Number of pages unknown]. M.S. thesis.

Gilbert, C.; Eli, Q. 2000. Homecoming: the story of African-American farmers. Boston, MA: Beacon Press. 193 p.

Gilbert, J.; Sharp, G.; Felin, M. 2002. The loss and persistence of Black-owned farms and farmland: a review of the research literature and its implications. Southern Rural Sociology. 18(2): 2–3.

Higgs, R. 1982. Accumulation of property by southern Blacks before World War I.

The American Economic Review. 72(4): 725–737.

Johnson Gaither, C. 2016. "Have not our weary feet come to the place for which our fathers sighed?": heirs' property in the Southern United States. e-Gen. Tech. Rep. SRS-216. Asheville, NC: U.S. Department of Agriculture Forest Service, Southern Research Station. 31 p.

Lewan, T.; Barclay, D.; DeSilva, B. 2001. Torn from the land. Associated Press. http://www.hartford-hwp.com/archives/45a/390.html; http://www.hartford-hwp.com/archives/45a/393.html; http://www.hartford-hwp.com/archives/45a/393.html. [Accessed May 29, 2019].

Macon County Revenue Commissioner's Office. [N.d]. Heirs' property within Prairie Farms, Alabama. http://isv.kcsgis.com/al.macon_revenue/. [Date accessed: November 15, 2016].

Mitchell, T.; Malpezzi, S.; Green, R. 2010. Forced sale risk: class, race and the "double discount". Florida State Law Review. 37: 589–658.

Pasquill, R., Jr. 2008. Planting hope on worn-out land: history of the Tuskegee Land Utilization Project, Macon County, Alabama, 1935–1959. Montgomery, AL: New South Books. 152 p.

Patterson, III, J. 2018. Heirs' property in the South: a case study of a resettlement community. Auburn, AL: Auburn University. 99 p. M.S. thesis.

Pennick, E. 2010. African-American land retention, acquisition and sustainable development: eradicating poverty and building intergenerational wealth in the Black Belt region. WWW.eAssets.org: Federation of Southern Cooperatives Land Assistance Fund and Tuskegee University. 41 p.

Penningroth, D. 2003. The claims of kinfolk: African American property and community in the nineteenth-century South. Chapel Hill: University of North Carolina Press. 320 p.

Pigford, Timothy et al. v. Dan Glickman, Secretary, United States Department of Agriculture, Civil Action No. 97-1978. Washington, DC: United States District Court for the District of Columbia, 1999.

Pippin, S.; Jones, S.; Johnson-Gaither, C. 2017. Identifying potential heirs properties in the Southeastern United States: a new GIS methodology utilizing mass appraisal data. e-Gen. Tech. Rep. SRS-225. Ashville, NC: U.S. Department of Agriculture Forest Service, Southern Research Station. 58 p.

Public Broadcasting System. 2017. Banished: American ethnic cleansings. Independent Lens. www.pbs.org/independentlens/banished/film.html. [Date accessed: October 10, 2018].

Reynolds, B. 2002. Black farmers in America, 1865–2000: the pursuit of independent farming and the role of cooperatives. RBS Research Report 194. U.S. Department of Agriculture Rural Business-Cooperative Service. 24 p.

Rivers, F. 2006. Restoring the bundle of rights: preserving heirs' property in coastal South Carolina. Article presented at the American Bar Association's 17th annual estate planning symposium, San Diego, CA.

Schelhas, J.; Hitchner, S.; Johnson Gaither, C.; Jennings, V. 2017. "Sunshine, sweat, and tears": African-American ties to land and forests in the South. e-Gen. Tech. Rep. SRS-220. Asheville, NC: U.S. Department of Agriculture Forest Service, Southern Research Station. 154 p.

Schulman, M.D.; Garrett, P.; Luginbuhl, R.; Greene, J. 1985. Problems of landownership and inheritance among Black smallholders. Agriculture and Human Values. 2(3): 40–44.

Stack, C. 1996. Call to home: African Americans reclaim the rural South. New York: Basic Books. 245 p.

Thomas, M.; Pennick, J.; Gray, H. 2004. What is African-American land ownership? Federation of Southern Cooperatives Land Assistance Fund. http://www.federationsoutherncoop.com/aalandown04.htm. [Date accessed: August 19, 2016].

U.S. Commission on Civil Rights. 1965. Equal opportunity in farm programs: an appraisal of services rendered by agencies of the United States Department of Agriculture. Washington, DC: U.S. Government Printing Office. 136 p.

U.S. Commission on Civil Rights. 1967. Equal opportunity in federally assisted agricultural programs in Georgia. The Georgia State Advisory Committee to the United States Commission on Civil Rights. 45 p.

U.S. Commission on Civil Rights. 1982. The decline of Black farming in America. Washington, DC: U.S. Government Printing Office. 196 p.

U.S. Constitution Amendment XIV, § 2.

U.S. Department of Agriculture. 1997. Civil rights at the United States Department of Agriculture: a report by the Civil Rights Action Team. Washington, DC. 95 p.

U.S. Department of Agriculture. 2011. Independent assessment of the delivery of technical and financial assistance. Civil rights assessment. Final report. Contract AG-3142-C-09-0049. Prepared by Jackson Lewis LLP, Corporate Diversity Counseling Group. 52 p.

U.S Department of Agriculture (USDA) National Agricultural Statistics Service (NASS). 2017. Census of Agriculture: selected farm characteristics by race: 2017. www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_1_US/st99_1_0061_0061.pdf. [Date last accessed: May 28, 2019].

U.S. Department of Commerce. 1913. Census of Agriculture, 1910, volume 6, part 1: reports by States: Alabama – Montana, Alabama. Washington, DC: U.S. Government Printing Office. 111 p.

U.S. Department of Commerce. 1920. Census of Agriculture, 1910, chapter IV: farm statistics by color and tenure of farmer, Alabama. Washington, DC: U.S. Government Printing Office. 155 p.

Warren, S.; Zabawa, R. 1998. The origins of the Tuskegee National Forest: nineteenth-and twentieth-century resettlement and land development programs in the Black Belt region of Alabama. Agricultural History. 72(2): 494–508.

Zabawa, R. 1991. The Black farmer and land in south-central Alabama: strategies to preserve a scarce resource. Human Ecology. 19(l): 61–81.

Zabawa, R. 2009. Prairie Farms resettlement community. In: Encyclopediaofalabama.org. http://www.encyclopediaofalabama.org/article/h-2148. [Date accessed: October 23, 2015].

Zabawa, R.; Baharanyi, N. 1992. Estate planning strategies and the continuing phenomenon of Black-owned land loss. The Rural Sociologist. 12(3): 13–23.

Zabawa, R.; Baharanyi, N.; Amougou, M. 1994. Factors associated with Black-owned land loss. Journal of Agricultural and Food Information. 2(4): 23–41.

Zabawa, R.; Siaway, A.; Baharanyi, N. 1990. The decline of Black farmers and strategies for survival. Southern Rural Sociology. 7: 106–121.

Zabawa, R.; Warren, S. 1998. From company to community: agricultural community development in Macon County, Alabama, 1881 to the New Deal. Agricultural History. 72(2): 459–486.

APPALACHIAN STUDIES

Towards a Better Understanding of the Experience of Heirs on Heirs' Property

B. James Deaton and Jamie Baxter

Abstract—Heirs' experiences with heirs' property vary considerably. In some cases, the use of heirs' property, and harmonized expectations about those uses, may be difficult to coordinate amongst cotenants. In these cases, heirs may be concerned about their ability to use the land to support wealth creation. On the other hand, some heirs may fear that another heir or non-family cotenant will seek to partition the cotenancy and, as a result, they may be concerned about their vulnerability to forced displacement from the property. These experiences—wealth and vulnerability—both arise because of the unique rights and duties associated with heirs' property as a form of real property called tenancy-in-common. While these rights and duties have dominated debates surrounding heirs' property, this paper draws attention to another set of legal relationships central to the internal life of heirs' property and the experiences of heirs' property owners: liberties and exposures. These relationships are diverse and remain understudied. A unique contribution of the paper is to conceptually demonstrate the importance of liberties and exposures to understanding the experiences of heirs on heirs' property.

INTRODUCTION TO THE WEALTH AND VULNBERABILITY CONCERNS

Two general concerns associated with heirs' property emerge because cotenants face the challenge of aligning their expectations around co-owned land (Deaton 2012, Deaton et al. 2009).[1] The "wealth" concern arises when one cotenant bars other cotenants from using the land in their preferred way, thereby diminishing overall wealth. The "vulnerability" concern arises when cotenants are vulnerable to dispossession as the result of a partition action. In our past research, we have generally characterized these two concerns as extreme cases: in the former, cotenants retain legal possession but the land goes unused; in the latter, the land may be transferred to a new owner who can use the land, but the original cotenants lose their property rights altogether. We believe these remain important concerns, but we recognize that the two extremes also fail to capture a range of intermediate situations in which cotenants work to coordinate their land uses. We do not have a good theoretical or empirical understanding of the rules and norms that govern in these intermediate cases. For example, how do cotenants decide between conflicting land uses? What happens when cotenants on jointly owned farmland disagree on tillage practices? Such choices have economic and environmental consequences. What happens when cotenants want to simultaneously use the land for mutually exclusive activities (e.g., bird watching versus skeet shooting)? The range of potentially conflicting situations is vast and varies depending on the potential uses of the land and the interests of cotenants. In this paper, we develop a conceptual foundation to understand these situations and call for more empirical work to explore the complexity of cotenant relationships.

We have addressed the wealth and vulnerability concerns at length in our earlier research, so we review these only briefly in the next section. In the third section, we argue that these two concerns are grounded in one important set of legal relationships—the reciprocal rights and duties of cotenants to exclude one another. But the path of the law as experienced by heirs depends on a broader set of these legal relationships. Cotenants not only have rights

[1] The terms "wealth concern" and "vulnerability concern" are fully developed in Deaton et al. (2009) and Deaton (2012). Deaton (2012) uses the term "wealth concern" in essentially the same way that Deaton et al. (2009) use "efficiency concern."

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and duties, they also enjoy certain liberties with respect to the land and are thereby exposed to the liberties of others. These liberty-exposure relationships foreground the informal rules of governance that are likely to emerge between cotenants to support effective coordination in some situations. We develop these concepts of "liberty" and "exposure" below and provide examples to illustrate. We conclude with a few ideas about how our conceptual framework might influence our assessment of effective efforts to address concerns associated with heirs' property.

SUMMARIZING THE WEALTH AND VULNERABILITY CONCERNS

The urgency to examine heirs' property derives from two concerns that we categorize as "wealth" and "vulnerability."[2] These concerns are no doubt stylized and over-simplified characterizations, but we use this approach for two reasons. First, it enables us to summarize a nuanced issue quickly. Second, we use these extremes to help clarify our primary focus in this essay—to encourage a better appreciation for the variation in governance strategies, outcomes, and diverse experiences of cotenants.

The wealth concern arises in situations where heirs' property becomes "dead capital"—an asset that cannot be leveraged effectively to generate new assets.[3] Overlapping property rights can make it difficult for cotenants to coordinate their activities to use land in an entrepreneurial manner to generate wealth. For example, banks are unwilling to allow one cotenant to mortgage heirs' property without the consent of the other cotenants (Deaton 2007). Similarly, one cotenant cannot use heirs' property in ways that would arguably prevent other cotenants from using the land: e.g., in some cases one cotenant cannot agree to have the land timbered without the consent of the other cotenants. In these and other situations, heirs' property will limit some uses of the land either because cotenants disagree on the appropriate use or the costs of effectively coordinating activities are too high. At the micro level, this may prevent the use of land in a manner that would generate income and wealth. In regions where heirs' property is prevalent, the diminished capacity of land to act as a form of capital may stymy regional development.[4] As Deaton (2007) argues, when the costs of "exit" are high relative to the benefits of a legal partition (i.e., a dissolution of the cotenancy relationship), the wealth concern can become a persistent problem that is embedded in the landscape. In previous research, the importance of the character of local ownership has been underemphasized. Specifically, in the context of Appalachia, studies like "Who Owns Appalachia?" (ALOTF 1983) focus on the large quantity of land owned by people outside the region rather than the way land is owned by small holders who remain in the region—particularly low-income households.

In contrast to the wealth concern, which is focused on the exchange values associated with the use of land, the vulnerability concern recognizes that cotenants value heirs' property for a myriad of reasons and that these values are vulnerable to the rights of other cotenants to seek partition. Deaton et al. (2009) provide three case studies from the central Appalachian region that address this issue with specific examples. For example, one heir (under the pseudonym Bernice Jones) expresses a fear of losing her personal attachment to the land as a legacy from her father, and a desire to maintain control over conservation measures. If the court awards a partition by sale,[5] then all the other cotenants could be unwillingly disposed of their land and their net compensation—which will vary depending on the size of their partial interest, the sale price, and the legal fees, and may not exceed their perceived loss.

At first blush, and in the extreme, the vulnerability concern provides an important counterweight to the wealth concern. The former concern aligns with efforts to maintain an heirs' property situation while the latter concern calls into question such efforts. While there is value to developing arguments around heirs' property using extreme characterizations of these two concerns, as a matter of experience, they do not fully characterize the variety of relationships that meaningfully describe heirs' experiences with heirs' property. In the remainder of this essay, we provide some thoughts on how to better organize thinking about these experiences that comprise the "internal life" (Alexander 2012) of heirs' property.

BEYOND WEALTH AND VULNERABILITY: RIGHTS, DUTIES, LIBERTIES, AND EXPOSURES

In this section we suggest that the wealth and vulnerability concerns dominate debates about heirs' property, in part, because our existing conceptual approaches to cotenancy[6]

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[2] Deaton et al. (2009) provide a detailed discussion of these concerns both conceptually and in the context of case studies.

[3] De Soto (2000) famously defined this term in the context of emerging markets where many of the poor are *de facto* owners of land but do not enjoy *de jure* rights. As a result, he argues, these *de facto* owners are less likely to use the land in entrepreneurial ways—e.g., investment, collateral, etc.—that support economic growth. In short, he argues that the poor have assets like land, but the lack of legal rights prevents it from effectively acting as capital.

[4] Deaton (2007) points out that this argument is best understood as a hypothesis. There remains a need to empirically assess this hypothesis.

[5] Deaton (2012) reviews the history of partition law in the United States and explains why partition by sale is a likely outcome.

[6] Deaton et al. (2009) fully develop the wealth/efficiency and vulnerability concerns.

tend to overlook certain important relationships between cotenants. Our starting point is to note that the competing concerns about wealth and vulnerability are primarily based on worries about how cotenants deploy one subset of their legal relationships—namely, the different exclusionary rights they can claim against one another. On the one hand, the wealth concern arises because cotenants sometimes have the right to exclude other cotenants from certain land uses or from obtaining a mortgage. In these situations, the other cotenants are under a legal duty to seek permission for the actions they wish to pursue, raising the spectre of coordination failures. On the other hand, the vulnerability concern arises because cotenants have the right to seek a partition of the property, resulting in a legal power to alter and often eliminate the property rights of other cotenants (as well as their own). While this emphasis on exclusion tracks much of the recent focus in property law scholarship more generally (Merrill 1998), as a descriptive matter it leaves out many of the other "governance" relationships (Alexander 2012, Smith 2002) that characterize heirs' property.

We aim to go back to basics, returning to the "fundamental legal conceptions" developed by Hohfeld (1913) in the early 20th century and later modified by Commons (1959). We use these fundamental legal conceptions—rights, duties, liberties, and exposures—to describe the relationships between heirs, and between heirs and non-heirs, with respect to heirs' property. While rights and duties have been the focus of much of our previous research, in the remainder of this paper we emphasize the importance of liberties and exposures as concepts that can help us to better understand: (1) the variety of relationships that exist between cotenants; (2) the consequences of those different relationships for heirs who are differently situated (e.g., local versus absentee co-owners); and (3) the implications for enforcement of heirs' entitlements through informal means. We do not attempt to fully explore each of these issues here, but rather to suggest a promising conceptual framework for future analysis.

In the remainder of this section we develop the Hohfeld (1913) and Commons (1959) approach in the context of heirs' property. For simplicity, assume that we wish to describe the complete set of possible legal relationships that exist between two cotenants, A and B (though the description below extends to heirs' property with any number of cotenants). Commons, drawing on Hohfeld's initial framework, identified several categories of correlative legal relationships that can be used to define this complete set. Two of these relationships are relevant for our purposes: rights-duties and liberties-exposures.

First, cotenant A may claim a *right* against B which imposes a correlative *duty* on B to behave in a particular way. A's "right" in this context is a legal entitlement to undertake some activity while B's "duty" is the correlative legal obligation to respect that entitlement—both of which will be enforced by the State. For example, A's right to exclude B from certain uses of heirs' land (such as cutting trees) imposes on B a correlative duty either to seek permission before engaging in those uses or otherwise to refrain from undertaking them. If B refuses to observe this duty, A can seek damages or an injunction in court.

Second, cotenant B may exercise a *liberty* which gives rise to A's correlative *exposure* to the consequences of B's actions. B's "liberty" is the freedom to undertake some activity that, while legally permitted, does not create a correlative duty on the part of A—meaning that B cannot call upon a court to prevent A from interfering by, for example, engaging in a conflicting use. B's liberty correlates with A's "exposure" to the potential costs of B's activity, against which A likewise has no legal recourse. For example, B may enjoy the liberty to engage in certain agricultural uses of heirs' land, exposing A to any externalities of that use, such as odours or soil erosion. If B spreads manure on jointly owned farmland on the 4th of July, A will be deterred from having a picnic on the land at the same time. The opportunity costs of not being able to use land for competing purposes are costs for which A may be unable to seek compensation.

As Commons pointed out, A's exposure to B's use of heirs' land for certain purposes is inversely correlated to the extent of A's right to use the land for those purposes. In this sense, liberties and exposures arise in the absence of rights and duties[7]—but liberties-exposures relationships are nonetheless *legal* relationships, different in theory from situations in which parties choose not to enforce their existing rights because, for example, the costs of going to court are too high. Being legal relationships, liberties-exposures are themselves enforceable entitlements to a certain freedom of action, subject to the freedoms of others—although it may sometimes be impractical to seek protection for these entitlements through the courts. As Sherwin (2000) describes, nuisance law's "live-and-let-live" rule is one example of liberties-exposures between neighbouring private owners: the "'live-and-let-live' rule permits normal low-level annoyance among neighbors without liability. Because the activities in question are valuable, the interference is minimal, the negotiation is difficult, and a rough reciprocity exists among owners, all will gain from a mutual interference. The result is a forced exchange in that the live-and-let-live rule mandates reciprocal tolerance of acts" (Sherwin 200: 700). More

[7] Commons (1959) preferred to use the term "limit" rather than "absence" because the former helps to clarify the nature of liberties and exposures as legal relations.

specific to the context of heirs' property, the common law principle that cotenants enjoy "unity of possession" over the whole of the co-owned property endows each cotenant with liberties, in some instances, to use the land even where those uses may conflict with the uses of other cotenants. Despite the central place that liberties-exposures appear to occupy in structuring heirs' property, these relationships remain understudied and are an important area for future research.

The prominent role of the liberty-exposure relationship in heirs' property situations marks a significance point of difference from sole ownership. For example, a sole property owner might feel reasonably assured that on any given day she could enjoy bird watching on her property (subject to minor interferences such as those permitted under the live-and-let-live rule). Such enjoyment may not be guaranteed among cotenants if one cotenant was a bird watcher but another, for example, wanted to engage at the same time in activities that made a great deal of noise and thereby precluded bird watching.

As a conceptual matter, distinguishing between the different rights-duties and liberties-exposures relationships that exist among cotenants helps us to see that the latter have generally been ignored in most discussions of the wealth and vulnerability concerns. While both concerns emphasize the costs of individuals asserting particular exclusionary rights and imposing correlative duties on their cotenants, the "internal life" of heirs' property—i.e., the routine experience of heirs on heirs' land—is also constituted by liberties and their associated exposures. Leaving these latter relationships out of our stories about heirs' property will necessarily lead to an incomplete assessment of key policy questions, such as how to support families to sustain heirs' property situations or, in some cases, dissolve them. For example, to the extent that the wealth concern raises the spectre of coordination failures and thereby supports the dissolution of heirs' property, greater attention to liberty-exposure relationships can help us to understand the opportunities and challenges for cotenants to overcome the full range of coordination problems in practice. In some cases, the exposed party's inability to go to law for recourse will inevitably produce a variety of *de facto* working rules to coordinate cotenants' uses of the land—for example, cotenants may informally agree to use the land on differing days during the week. Given the range of liberties afforded to cotenants, we might expect that these and other governance strategies for overcoming collective action problems are pervasive in heirs' property situations. Where these strategies are successful, partition actions are expected to be less prevalent. That said, forms of governance may be unstable because they are vulnerable to changing preferences among existing cotenants over time and to the preferences of new cotenants who enter the scene because of an intestate death, a testamentary bequest by a deceased cotenant, or the sale of partial interest. Our point is not that governance strategies among cotenants will inevitably solve collective action problems, but that any normative debates about the persistence of heirs' property must surely consider the real possibilities for the successes or failures of these working rules over time.

This point leads to two further implications of a renewed focus on the complete set of legal relationships that characterize heirs' property. First, the distinction between rights-duties and liberties-exposures draws attention to important spatial or geographic dimensions of cotenancy. The exclusionary rights of cotenants can generally be exercised by those living at a distance from the land itself, underscoring the prominent role that may be played by absentee cotenants in this subset of claims. For example, both the wealth and vulnerability concerns have been connected to some degree to the role of absentee cotenants either in blocking certain productive land uses or in forcing a partition by sale (especially against the wishes of resident cotenants). But the exercise of competing liberties on heirs' property is presumably more likely to be undertaken by local cotenants who have physical access to, and direct interests in using, the land itself.

Second, cotenants' enforcement of their exclusionary rights necessarily implicates formal systems of dispute resolution in a way that the exercise of liberties and the development of associated governance strategies as a form of self-help does not, suggesting that access to lawyers and other legal resources may have different implications depending on the legal relationships at stake. For example, because cotenants will generally need to go to court to secure a partition order or acquire an injunction, the availability of these remedies will tend to be biased in favour of individuals who can afford to hire a lawyer or who have the necessary knowledge to self-represent. But cotenants engaged in exercising their liberties or in devising informal governance arrangements will be less affected by the distribution of these tangible and intangible resources—though of course, other inequalities such as greater willingness or capacity of one cotenant to intimidate another are potentially relevant considerations. Again, our aim here is not to describe or organize the specific governance strategies that might be used by heirs as forms of self-help to manage liberty-exposure relationships, but to emphasize that—as a matter of theory—these relationships and governance strategies have too often been ignored.

CONCLUSIONS

Our research on heirs' property has focused on two key concerns that emerge from heirs' property situations: wealth and vulnerability. These two concerns are primarily the results of the rights-duties relationships that are

structured by heirs' property or, more formally, tenancy-in-common. But as we point out in this essay, and as Hohfeld (1913) was quick to observe, talk of legal "rights" can too easily conflate other important legal relationships. Each heir not only holds a set of enforceable rights against her co-owners, she also enjoys a degree of liberty with respect to her property which will expose other cotenants to her actions. These liberty-exposure relationships are intimately tied up with cotenants' chosen—and sometimes conflicting—uses of the land. For this reason, both formal and informal familial practices and verbal agreements are likely to be significant: cotenants who live close to the land and use it regularly may have worked out certain ways of effectively governing the land amongst themselves. This is not to suggest that non-local or absentee cotenants living in other States are unimportant for the governance of heirs' property, but the extent to which they actually contribute to shaping these working rules remains an open question.

Broadly, our return to first principles holds two key lessons for future research, policy analysis, and law reform related to heirs' property. One lesson is that a full evaluation of partitioning or otherwise dissolving heirs' property should include an assessment of how that property is governed in practice. The "winners" and "losers" associated with dissolving heirs' property depend, in part, on the relations governing heirs' property. As we point out, these relations can be categorized as liberties and exposures as well as the conventional right-duty relationship. A second lesson follows: the need for more granular empirical research or case studies to better identify and assess these relationships. One way to orient these case studies is to evaluate the effectiveness of various efforts to govern these relationships. For example, these efforts might include monthly meetings among cotenants, and the regularity of these meetings, or their absence, may influence the extent to which expectations between heirs are effectively coordinated. Recognizing the liberties-exposures relationships, as well as the conventional rights-duties relationships, offers a starting point for this research. What follows is a list of specific questions:

- How are governance strategies over heirs' property and their working rules designed, and by whom?
- How are these relationships enforced, and what factors (e.g., size of the group, gender, age, spatial location) contribute to their success?
- What are the motivations of heirs who choose to partition, or "exit," these relationships? While some may seek financial gains, others may want to pursue land uses that are incommensurate with co-ownership. Diverse motivations may also be linked to the identity of the partitioning cotenant (e.g., a coal company seeking to mine the land versus a family member who feels disadvantaged by the existing governance).
- How do the rules of governance and exit interact in these contexts? Answering this question would help, for example, to predict outcomes associated with the Uniform Partition of Heirs Property Act. With respect to the Uniform Partition of Heirs Property Act, more empirical research and case studies are needed.

In this paper, we sought to broaden the theoretical framework used to understand heirs' property. We explicitly defined a portfolio of legal relations that constitute heirs' property: e.g., rights, duties, exposures, and liberties. Our novel contribution is drawing explicit attention to the liberty-exposure relationship. Cotenants exercise liberties and are exposed to the actions of other cotenants, giving rise to disputes that are often not subject to formal resolution in court. Nevertheless, these relationships are likely to meaningfully shape expectations about the future benefits and costs of being a cotenant. In this regard, particularly in scenarios where there are many co-owners who are differentiated spatially with respect to the property, asymmetric interests will parallel asymmetric information and complicate the challenge of harmonizing future expectations. In these settings, the experience of heirs on heirs' property depends on how liberty-exposure relationships are meaningfully worked out in practice. The theoretical framework we have mapped here brings these governance concerns into focus and suggests a route to unpacking their consequences for cotenants.

LITERATURE CITED

Alexander, G.S. 2012. Governance property. University of Pennsylvania Law Review. 160 (7): 1853–1887.

Appalachian Land Ownership Task Force [ALOTF]. 1983. Who owns Appalachia? Landownership and its impact. Lexington, KY: The University Press. 272 p.

Commons, J.R. 1959. Legal foundations of capitalism. Madison: University of Wisconsin Press. 394 p.

De Soto, H. 2000. The mystery of capital: why capitalism triumphs in the West and fails everywhere else. New York: Basic Books. 288 p.

Deaton, B.J. 2007. Intestate succession and heir property: implications for future research on the persistence of poverty in central Appalachia. Journal of Economic Issues. 41(4): 927–942.

Deaton, B.J. 2012. A review and assessment of the heirs' property issue in the United States. Journal of Economic Issues. 46(3): 615–631.

Deaton, B.J.; Baxter, J.; Bratt, C. 2009. Assessing the consequences of heir property. Ecological Economics. 68: 2344–2353.

Hohfeld, W.N. 1913. Some fundamental legal conceptions as applied in judicial reasoning. Yale Law Journal. 23(1): 16–59.

Merrill, T.W. 1998. Property and the right to exclude. Nebraska Law Review. 77: 730–755.

Sherwin, E. 2000. Epstein's property. QLR. 19(4): 697–714.

Smith, H.E. 2002. Exclusion versus governance: two strategies for delineating property rights. The Journal of Legal Studies. 31(S2): S453–S487.

Appalachia's "Big White Ghettos": Exploring the Role of Heirs' Property in the Reproduction of Housing Vulnerability in Eastern Kentucky

Cassandra Johnson Gaither

Abstract—Heirs' property presents obstacles to asset building because such properties have "clouded land titles," i.e., those that are difficult or impossible to use as collateral for home mortgages. Because of these difficulties, heirs' property owners may be more likely to purchase manufactured or mobile homes rather than site-constructed ones because mobile home financing can be accomplished with chattel loans. The purchase of a manufactured home as chattel property, when attached to real property classed as heirs' property, intensifies housing vulnerability because manufactured home values are more likely than site-built homes to depreciate in value; this, in concert with heirs' property classification inhibits owners' abilities to use these assets to build wealth. Using secondary parcel data, I examine the association between heirs' property ownership and manufactured housing in eight counties in central Appalachia (southeastern Kentucky)—Clay, Harlan, Knox, Lee, Leslie, Letcher, McCreary, and Owsley Counties. Contrary to expectations, I found a negative and significant association between heirs' parcels and manufactured housing presence for six of the eight counties. Further analyses revealed lower assessed property values for heirs' properties compared to non-heirs' properties, suggesting that heirs' properties are less likely to contain any kind of improvements and consequentially are more likely to be underutilized from an economic, asset-enhancing perspective.

Keywords: Appalachia, heirs' property, manufactured homes.

INTRODUCTION

A tenancy-in-common or "heirs' property" is privately owned real property, held jointly by two or more people who are typically related. This land tenure form presents numerous financial constraints for owners due to the fact that it can be difficult to ascertain the lawful co-heirs (owners) and the consequential eschewing of such properties by lending institutions. For instance, heirs' status severely limits the ability of owners to obtain financing for conventional home mortgages. Banks will not accept such properties as collateral for loans unless all heirs agree to assume the debt. Securing such agreement may be next to impossible given family conflicts and divergent ideas about the best use for the property. The only recourse for homeownership for an heir who wants to live on the property may be a manufactured home (mobile home) purchase because financing for these dwellings can be accomplished with chattel (personal) loans, which are much easier to secure than mortgages (Genz 2001). Indeed, years of anecdotal observations suggest heirs' property prevalence and mobile home presence are positively related. In their study of heirs' property in Alabama, Dyer and Bailey (2008: 322) found "extraordinarily high" percentages of manufactured homes in two Alabama counties also believed to contain high percentages of heirs' property. The authors stress: "Mobile [manufactured] homes are an indicator of substandard housing and their prevalence may be an indicator of the prevalence of heirs' property because owners of such property are unable to qualify for conventional mortgages and must rely on personal loans (at higher interest rates) to purchase mobile homes."

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Sociology of property scholar Geisler (1995) stresses that land ownership, or the lack thereof, is a fundamental determinant of poverty's persistence. Geisler (1995), underscoring Mumford's (1962) argument that land ownership is crucial to a myriad of well-being measures, stresses that land insulates owners from destitution, over and above any income streams land may provide, and offers security for the elderly when those active streams dissipate in old age. To be without this asset exacerbates family instabilities. However, I argue that if title to that same land is "unclear" (i.e., classed as heirs' property), then its ability to build wealth for families and its efficacy as a bulwark against financial downturns are reduced, both in financial as well as social welfare terms, thus potentially increasing a range of social vulnerabilities.

In a similar vein, Deaton (2007) explicitly calls for research examining links between heirs' property and poverty. While I do not examine poverty per se, this study examines the association between property classed as heirs' property and manufactured homes in eight southeastern Kentucky counties—Clay, Harlan, Knox, Lee, Leslie, Letcher, McCreary, and Owsley—using data obtained from the U.S. Department of Agriculture Forest Service's Forest Inventory and Analysis program.[1] Comparatively little research explores heirs' property ownership in Appalachia. Also, this is the first extensive study of the relationship between heirs' property ownership and manufactured housing.

LITERATURE REVIEW

Heirs' Property in Appalachia

The heirs' property phenomenon is evident across the rural to urban continuum, but the preponderance of writing and attention to this topic focuses on land tenure problems encountered by southern, rural African Americans (Baab 2011, Chandler 2005, Hitchner et al. 2017, Mitchell 2001, Mitchell 2005, Mitchell et al. 2010, Rivers 2007)—and for good reason. In 1980, the Emergency Land Fund estimated that 41 percent (3.8 million acres) of all African-American-owned land in the South was held as heirs' property (Emergency Land Fund 1980). Heirs' properties are expected to be pervasive in communities with higher-than-average poverty rates and lower educational attainment. While these descriptors characterize many rural, predominantly African-American communities across the Black Belt South (Gilbert et al. 2002), they aptly describe southeastern Kentucky communities as well. The socio-demographics of rural, central Appalachian counties alone compel a closer look at the extent of heirs' properties in Appalachia, yet these communities and social groups are typically left out of heirs' property discourses. The only research of which I am aware that draws attention to heirs' property in central Appalachia has been conducted by Deaton (2005, 2007) and Deaton et al. (2009), who focus on just one county—Letcher County, KY. In line with Pruitt and Sobczynski's (2016) argument that poor, rural White communities are often not highlighted in cases involving environmental injustice, I also maintain that heirs' property and its consequences in central Appalachia remain an undeveloped area of study (Hendryx 2011). Pruitt and Sobczynski (2016) suggest that *race rather than place* is typically the focal point of questions involving environmental injustices, perhaps because racial inequity may be a more compelling platform from which a case for environmental injustice may be launched. The paucity of literature on the intersection of heirs' property and rural White populations may reflect this predisposition as well. There is an abundance of literature on Appalachian poverty and the factors that contribute to its persistence. That scholarship will not be discussed extensively in this paper because the myriad roots of Appalachian poverty are not the primary focus of this analysis. However, I do borrow terms from Williamson's (2014) popular press article which characterizes Appalachia as a "big White ghetto" because of the region's enduring poverty, perpetuated by declining coal and timber industries, high rates of both legal and illegal drug use, and its dependence on government assistance. This ironic descriptor also calls attention to the fact that predominantly White, rural areas like Appalachia experience challenges similar to those encountered by the urban poor; I would add that, like urban poverty, rural poverty can be traced to the usurping of real property rights by non-local elites (Teaford 2000).

Billings and Blee (2000: 36–37) stress that resource appropriation in Kentucky dates back to colonial times when investors from outside of the territory acquired millions of acres of land from Native populations. When White settlement began in 1775, the majority of land claims were filed by large land-holding interests, not homesteaders. Eller's (1982: 56) historical analysis of industrialization's impact on Appalachia supports this assertion, noting that "[o]bscure land titles, lost deeds, and poor records were common to most mountain communities, and speculators were quick to turn this to their advantage." The same kind of speculation or predatory practice that provides entre into African-American heirships via the buying of one or more heirs' interests (see Mitchell and Craig-Taylor in these proceedings) has also been common in eastern Kentucky. Gaventa (1980: 54–55) writes that historically, speculators would:

[1] Specifically, Digital Map Products and CoreLogic datasets. Data used in this analysis were a combination of the two datasets.

> *…acquire the rights of a single heir on a piece of property left to several family heirs. When the other heirs refused to sell, the Company [sic] would go to court and ask for a judgment on whether the property could be 'fairly and impartially partitioned' and on whether the 'said property is of such a nature so that its sale could be of manifest interest to all parties.' Almost invariably, the court would rule that it could not be divided, and that it should be sold at a 'public auction to the highest bidder'…. Even now it is not uncommon in the area to hear statements like 'see that mountain, the 'sociation stole it from my daddy.'*

The torrential rains and ensuing floods that destroyed homes in eastern Kentucky and West Virginia in 1977 helped to set in motion an investigation of land ownership in Appalachia. The influential "Who Owns Appalachia?" study published in 1983 revealed that 72 percent of affected lands were owned by absentee owners, and 80 percent of rights to subsurface-level mineral rights were owned by absentee owners, key factors that Appalachian studies scholars contribute to the region's generational poverty (Appalachian Land Ownership Task Force 1983, Gaventa 1995).[2] Deaton (2005) stresses that while this revelation is important for understanding the relative lack of local ownership, the Appalachian study paid little or no attention to local, private land ownership and the forms this takes.[3] Deaton (2005, 2007) and Deaton et al. (2009) assert that heirs' property holdings pervade Appalachia and that, as a form of capital, land is not maximized to its fullest extent because of tenuous property holdings. No comprehensive survey of heirs' property ownership has been conducted for Appalachia; however, Deaton's (2005) survey of Letcher County, KY, in 2004 revealed that 24 percent of local, nonindustrial landowners held some portion of their real property as heirs' property. However, this figure should be considered with some caution because of the small sample size (n = 47 respondents).

Given limited amounts of land available for smallholders, the question is: why the likely preponderance of heirs' properties, both historically and contemporarily? Historically, topographical features of the land may have played a role. Early settlements were demarcated by mountains, which reinforced cultural isolation and the primacy of kinship ties over integration with the larger society. Because land ownership ended at mountain ridges, social and civic obligations often terminated there as well (Eller 1982: 7). Efforts to clarify property ownership through mechanisms such as probate courts may have been inconsistent with local priorities. Also, lack of knowledge about legal requirements of land ownership may have also been a contributing factor. Contemporarily, Deaton (2005, 2007) posits that high transaction costs (e.g., court fees) involved in clearing titles perpetuates this sort of land tenure.

Challenges of Manufactured Home Ownership

Manufactured homes comprise a large percentage of the housing stock in Appalachia (north Alabama, Kentucky, east Tennessee, West Virginia, and Virginia) (Jones et al. 2016). There are >560,000 manufactured or mobile homes in Kentucky (Kentucky Housing Corporation 2013). These units make up 19 percent of the occupied housing units in the State (Jones et al. 2016: 60). Manufactured homes are concentrated in the southeastern portion of Kentucky, comprising between 27 and 34 percent of the housing stock (Jones et al. 2016: 60).

Furman (2014: 4) distinguishes "manufactured housing" from "mobile home"; both are constructed on a chassis, but the latter references houses built prior to June 15, 1976. After this date, factory-constructed homes were required to conform to U.S. Department of Housing and Urban Development (HUD) codes. Categorically, the post-1976 constructions are considered superior in design and durability, compared to such homes built before this date (Jones et al. 2016). Indeed, post-1976 manufactured home models that conform to HUD standards offer affordable housing options (Beamish et al. 2001). For instance, the mean sales prices in May 2018 in the Southern United States were $56,300 for a new, single-wide manufactured home (not including land) and $97,000 for a double-wide (U.S. Census Bureau 2018).[4] To compare, the average sales price in August 2018 for a new, site-constructed home was $388,400, and the median purchase price of a new site-constructed home was $320,200 for the same period (price includes land) (U.S. Census Bureau 2018).

Manufactured homes are more likely to be purchased by older people, those with only a high school education, and lower income and lower net worth households (Consumer Financial Protection Bureau 2014: 13). Heirs' property owners may also be more likely to purchase manufactured homes because of the lower cost relative to site-built homes, and because no additional costs for land

[2] Peluso et al. (1994) and West (1994) also argue that poverty in regions such as Appalachia is due not only to the unevenness of private land ownership distributions but also because these places have long been dominated by extra-local, public land management bureaucracies that wield power favoring specific resource extraction interests.

[3] The report states that <50 percent of the land in Appalachia was owned by local people.

[4] Single-wide mobile homes are ≤18 feet (5.5 m) × 90 feet (27 m) wide. Double-wides are ≥20 feet (6.1 m) × ≤90 feet (27 m) wide. Double-wides have features similar to site-constructed homes, as opposed to the rectangular-shaped structures that characterized many mobile homes prior to the 1970s.

purchases are required. This understanding is expressed by a research participant in Dyer and Bailey (2008: 330): "The only catch to (heir property) is most companies want you to have a clear title to a tract where you can build a house." The respondent then contrasts this requirement with that for a manufactured home: "With a mobile [manufactured] home, they'll just put it on the property…. The advantage (of heir property)…is that whoever wants to put a home here can; they don't have to look for property anywhere else."

Despite the advantages of affordability and improvements in quality, manufactured homes can exacerbate social (i.e., housing) vulnerability because higher interest rates are required for the chattel loans that secure them; loan periods are shorter; buyers are targeted by subprime lenders; and housing values of nearby site-built homes are lowered (Wubneh and Shen 2004). A major criticism of manufactured homes is that they often follow "blue book" depreciation schedules used for motor vehicles (National Consumer Law Center 2014, Pendall et al. 2012). The consensus among both creditors and home purchasers is that manufactured homes either depreciate in value, compared to site-constructed homes, or their appreciation is much less predictable (Jewell 2003, Wubneh and Shen 2004, Yarnal and Aman 2009). Jewell (2003) qualifies these assumptions. The value of a manufactured home is more likely to appreciate if it is situated on land owned by the owner of the manufactured home who would have the right to alienate (that is, sell) both the land and the manufactured home. Ownership of both reduces ambiguities for potential buyers and thus has the effect of increasing bargaining prices.

Heirs' property owners would seem to be on good standing with respect to this stipulation given that they are private property owners. However, heirs' property ownership involves undivided, fractional land interests. Ownership of the land is conditioned by the fact that owners do not possess clear, marketable title to land, only fractional interests. Although these owners may convey the full manufactured home title to a potential buyer, owners do not have the right to transfer full title to the land; they can convey only their fractional interests in the land. According to the Chief Appraiser with the Athens-Clarke County, GA, Tax Assessor's Office, manufactured homes located on heirs' property are routinely valued lower than manufactured homes on property with clear title precisely because buyers do not want to buy into heirships.[5]

So, while manufactured homes can reduce housing vulnerability by offering both shelter and many other non-tangible benefits associated with home ownership, from a long-term investment perspective, buyers do not fare well because of the displacement specter. An emotionally charged case involving displacement of heirs' property owners in the coastal region of South Carolina illustrates this point. Twenty-five members of the Rivers family clan were evicted from their property in 2001 by county deputies after a court ruled that the heirs' property on which the family resided was to be sold to a developer. The judge overseeing the case ordered that the land be sold and six homes removed (Grabbatin and Stephens 2011: 133). The recounting of eviction day by the *Charleston Post and Courier* (recounted in Grabbatin and Stephens 2011) goes on to state that one heir in particular could only "watch[ed] as Berkeley County Deputies placed her mobile home on a trailer, removed the cinder blocks, and hauled it away." This eviction happened because, at that time, anyone with a fractional interest in heirs' property could ask that the land be partitioned, and, at that time, other co-heirs did not have the rights afforded to them by the Uniform Partition of Heirs Property Act (see Mitchell in these proceedings). In this case, the court ruled that the best way to divide the property was via a court-ordered partition sale. This meant that all family members who lived on the land had to vacate the property because it was sold to someone outside of the family.

METHODOLOGY

Residential, farm, and condominium parcels in Clay, Harlan, Knox, Lee, Leslie, Letcher, McCreary, and Owsley Counties (fig. 1) were analyzed using secondary datasets compiled by Digital Map Products and CoreLogic. The data contained parcel listings with annotations indicating heirs' property. I classified a parcel as heirs' property if the owner name column contained any of the following notations: "heirs," "hrs," "et al.," "others," "estate of," "others," or "1/x" (indicating fractional interest). Counties use varying methods of describing parcels as heirs' property, and, in some cases, no clear indication may be made. I consider heirs' indicators contained on the parcel listings as incomplete inventories of heirs' property for the respective counties because of inconsistencies in how counties account for heirs' property. For this reason, I assume that the heirs' parcels identified represent a sample rather than a census of all possible heirs' parcels in the study counties. The data provide no indication of manufacture date of mobile homes although I suspect that a number of them may have been constructed before 1976.

The combined Digital Map Products and CoreLogic databases contain 117 fields, including: property owner name, property location, owner address, building age, number of rooms in structures, number of acres, land use category, assessed and improvement values, sale price, and

[5] Personal communication. 2017. K. Dunagan, Chief Appraiser, Tax Assessor's Office, Athens-Clarke County Unified Government, Athens, GA 30603.

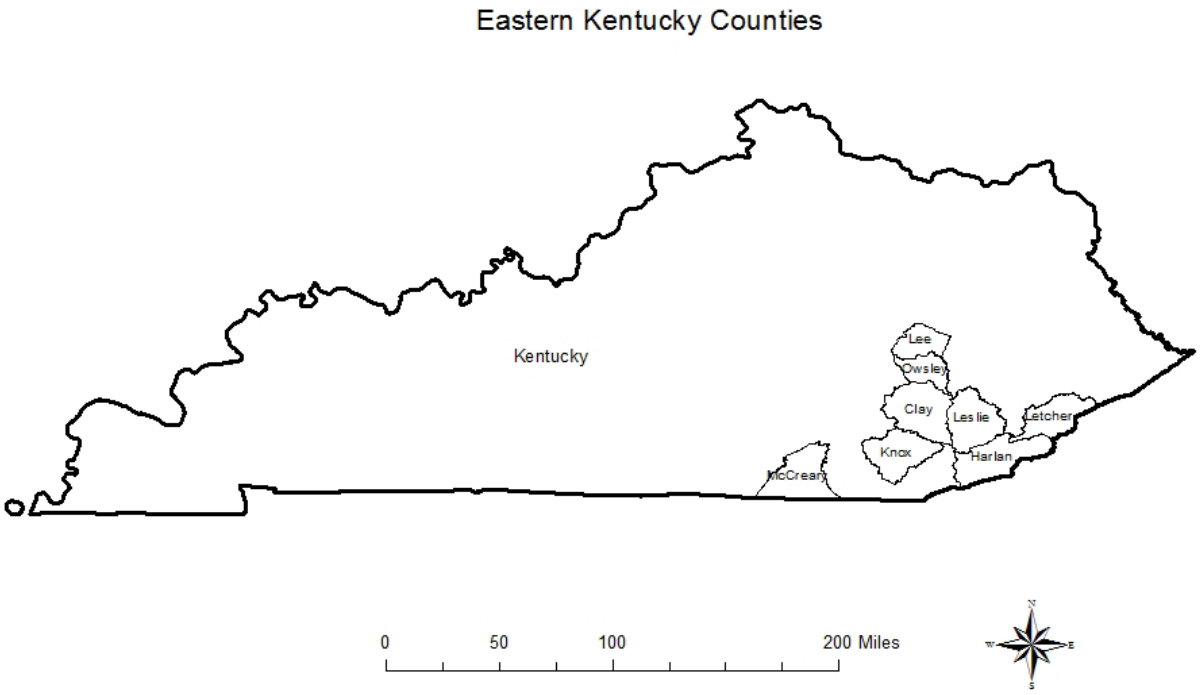

Figure 1—Study area, comprising eight southeastern Kentucky counties.

sale date. The data are in the form of geospatial files for use with Geographic Information System software. Data obtained were for tax years 2017– 2018.

I specified eight logistic regression models to evaluate the relationship between manufactured homes and heirs' property. The dependent variable, manufactured home, was coded 1 if the property contained such a dwelling and 0 otherwise. Heirs' property is the only predictor variable. It was coded 1 for heirs' property and 0 for non-heirs' property.

RESULTS

Table 1 shows number of heirs' parcels, percent of parcels classed as heirs' property, along with acreage and assessed property value (land and structures). These numbers include all heirs' parcels, not just residential, farm, and condominium. Leslie County stands out in terms of greatest number, percent acreage, and value of heirs' property. Heirs' property acreage totals >100,000 for the eight-county area with a value of roughly $60 million. Assessed values are typically lower than the market value (home sale price). Local governments use assessed real estate values to levy property taxes. These values are calculated by taking into account the value of nearby properties, recent improvements, and rental income. Table 1 also shows that mobile or manufactured housing units comprise between 21.6 percent and 41.3 percent of all housing units in these counties. These percentages are from the 5-year (2012-2016) U.S. Census Bureau American Community Survey (Social Explorer 2017a). These figures are far above the average 12.1 percent for the State and the roughly 6 percent for the Nation.

Table 2 shows key socio-demographic variables for the study counties, for Kentucky, and for the United States—population, percent of population age 18–64 below poverty, median household income, median age, percent of population covered by a public health care policy, and percent unemployed for those age 16 and over (Social Explorer 2017b). Compared to both the Nation and the state of Kentucky, each of the study counties has a higher poverty rate, lower annual median household income, higher public health care coverage, and higher unemployment rates.

Logistic Regression: Heirs' Property and Manufactured Homes

Using SAS statistical software, I fitted logistic regression models, where the probability of a parcel containing a manufactured house or a "mobile home" (Y = 1) was modeled as a function of the binary heirs' variable. Table 3 shows model results, including beta weights, odds ratios, and *p*-values for each model. There was a strong and significant association between heirs' property and manufactured housing for every county except Harlan and Letcher; however, this relationship was opposite of what was expected. Consistent with the significance

Table 1—Heirs' property characteristics for Clay, Harlan, Knox, Lee, Leslie, Letcher, McCreary, and Owsley Counties, KY

	Number of county parcels	Number of heirs' parcels	Percent of parcels classed as heirs' property	Heirs' property acreage	Heirs' property assessed value	Percent manufactured housing
Clay	11,622	343	3.39	12,431.16	$8,433,100	30.1
Harlan	17,331	354	2.42	10,645.25	$4,373,853	21.6
Knox	16,995	149	0.99	5,732.05	$2,818,465	30.6
Lee	4,128	141	3.93	8,036.40	$2,631,625	24.9
Leslie	8,468	1,255	15.19	45,545.88	$23,106,924	41.3
Letcher	13,839	338	2.44	360.70	$1,907,300	27.6
McCreary	8,602	476	5.83	8,368.81	$10,743,652	28.5
Owsley	2,711	228	8.58	10,235.30	$6,310,800	26.5
Total	83,696	3,284	--	101,355.55	$60,325,719	--

Sources: Parcel data: Digital Map Products and CoreLogic for 2017–2018. Manufactured housing data: Social Explorer (2017a).

Table 2—Socio-demographic characteristics for Clay, Harlan, Knox, Lee, Leslie, Letcher, McCreary, and Owsley Counties, KY

County	Population	Percent below poverty	Median household income	Median age	Percent public health care	Percent unemployed
Clay	21,160	39.2	$22,174	39.0	60.4	11.7
Harlan	28,031	32.9	$25,350	41.2	56.9	10.3
Knox	31,740	33.1	$26,553	40.1	57.3	13.3
Lee	6,896	37.8	$21,185	42.8	56.8	13.8
Leslie	10,869	31.7	$25,282	41.7	54.6	17.0
Letcher	23,382	29.5	$29,181	41.7	55.8	12.9
McCreary	17,850	43.0	$18,972	38.9	59.8	17.7
Owsley	4,552	36.5	$22,106	41.7	61.7	8.4
Kentucky	4,411,989	18.0	$44,811	40.0	38.1	7.6
United States	318,558,162	14.2	$55,322	37.7	33.0	7.4

Source: Social Explorer (2017b).

values, the odds ratio column shows that for the same six counties (Clay, Knox, Lee, Leslie, McCreary, Owsley), the odds of a manufactured dwelling on heirs' parcels were significantly lower than for non-heirs' parcels.

Given the unexpected association, I attempted to examine the data to determine whether there were fewer houses, generally, on heirs' compared to non-heirs' parcels. Missing data prevented this analysis; however, I did compare mean assessed values for heirs' and non-heirs' properties, as this would provide some indication of property improvements. Table 4 shows these results. Data were analyzed using an independent samples *t*-test. The assessed value, again, reflects rates for both the land and improvements. Across all counties, mean assessed heirs' property values were significantly lower than the mean values for non-heirs' properties. This suggests that there may be fewer improvements or structures of any kind, whether manufactured or site-built homes, on heirs' parcels. This finding is consistent with my understanding that heirs' parcels are less likely to be improved, thus resulting in underutilized capital.

Table 3—Logistic regression estimates for heirs' property and manufactured housing for Clay, Harlan, Knox, Lee, Leslie, Letcher, McCreary, and Owsley Counties, KY

County	MLE coefficient	HP 95% CI	HP odds ratio	Odds ratio 95% CI	Model chi-sq.	*p*-value	% correct predictions	N[a]
Clay	-0.75	-1.10– -0.41	0.47	0.33–0.67	22.02	0.0001	0.510	10,130
Harlan	0.10	-0.42–0.62	1.11	0.60–1.87	0.13	0.7095	0.502	14,610
Knox	-1.54	-2.18– -0.90	0.21	0.11–0.41	34.44	<0.0001	0.505	15,031
Lee	-1.47	-2.47– -0.47	0.23	0.09–0.63	13.44	0.0040	0.516	3,584
Leslie	-0.53	-0.73– -0.33	0.59	0.48–0.72	30.24	<0.0001	0.530	8,261
Letcher	0.04	-0.49–0.57	1.04	0.61–1.78	0.02	0.8793	0.575	3,165
McCreary	-0.31	-0.58– -0.03	0.74	0.56–0.97	4.93	0.0321	0.508	8,159
Owsley	-0.65	-1.10– -0.21	0.52	0.33–0.81	9.71	0.0039	0.521	2,657

MLE = maximum likelihood estimation; HP = heirs' property; CI = confidence interval.

[a] Sample size is smaller than total county parcels because only residential, non-industrial farm, and condominium parcels were retained for logistic regression, and parcels with missing values were not included in the regression models. A large number of Letcher County parcels (>10,000) had no indication of parcel type which accounts for the large reduction in sample size for that county.

Table 4—Mean[a] assessed property values for heirs' and non-heirs' properties for Clay, Harlan, Knox, Lee, Leslie, Letcher, McCreary, and Owsley Counties, KY.

County	Heirs' property[b] (*dollars*)	Non-heirs' property[b] (*dollars*)	*t*-value	*p*-value	N
Clay	24,658 (29,745)	36,139 (44,604)	6.87	<0.0001	10,084
Harlan	12,356 (16,155)	35,923 (44,107)	25.21	<0.0001	14,580
Knox	19,044 (34,245)	44,869 (56,369)	9.05	<0.0001	14,995
Lee	18,664 (31,920)	34,549 (41,946)	5.71	<0.0001	3,561
Leslie	18,530 (22,632)	27,657 (47,764)	10.62	<0.0001	8,219
Letcher	25,672 (27,249)	32,223 (43,922)	1.82	0.0738	3,142
McCreary	23,007 (23,522)	39,928 (40,521)	14.28	<0.0001	7,960
Owsley	27,679 (28,498)	42,913 (44,846)	7.27	<0.0001	2,650

[a] Mean for parcels with assessed values >0.

[b] Number in parenthesis is standard deviation.

DISCUSSION

I presented a simplified model examining the relationship between heirs' properties and manufactured homes. Although the association in most of the counties was contrary to my hypothesis, I suspect that there are fewer structural improvements to heirs' property in general, and this relative lack is reflected in the lower incidence of manufactured housing on heirs' parcels.

Alternatively, it may be that manufactured housing was sporadically indicated by the counties. The lack of uniformity in land parcel data is a common problem, which limits the use of these data to address landscape-scale problems. Pippin et al. (2017: 12) address this issue in a call for consistency in parcel data collection and reporting:

> *In 2015, the Coalition of Geospatial Organizations gave the United States a D+ for its poor investment in the development and maintenance of parcel data, noting that more than "3,200 counties and equivalent units of local government maintain 150 million non-Federal land parcels" in a piecemeal and nonstandard manner…. From zoning decisions to transportation planning to national disaster response, land parcel data underlies multiple areas of government and private decision making. Yet good and consistent data about property ownership and parcel boundaries remain unavailable.*

Despite these limitations, manufactured home prevalence is a key vulnerability indicator to examine vis-à-vis heirs' property because it demonstrates a potential *outcome* resulting from heirs' property prevalence rather than an antecedent of the phenomenon (e.g., as minority status or poverty may be). There are a number of other factors associated with people's abilities to purchase homes, none of which may have to do with unclear land titles; for instance, property owners might be a high credit risk due to low income or non-payment of bills, or sufficient credit may not have been established. Again, the parcel data focus exclusively on indicators associated with the property rather than on individual qualities of property owners such as their creditworthiness. Unfortunately, the parcel data do not allow for an examination of these important human factors in the model.

It could be argued that limitations on asset building or leveraging are somewhat less important if the property in question is used primarily for residential rather than income-generating purchases such as agricultural production or rental income. Again, heirs' properties may play important social roles in the lives of co-heirs, often providing a physical living space as well as intangible connections to place. If this is the primary goal for most rural heirs' property owners, then long-term appreciation of homes may be relatively unimportant, compared to the goal of simply providing a home for family members during their lifetime. I did not speak to property owners about their goals and purposes for land ownership. However, the data for each of the counties show that >50 percent of heirs' parcels are either identified as single-family residence or nonindustrial farm, suggesting that credit access to undergird an income-generating enterprise is less important for a significant percentage of these property owners.

More broadly, results are relevant to the discussion and theorization of persistent poverty in rural America because the identification of heirs' parcel concentration helps to illuminate an exact factor (heirs' status) that contributes to social marginalization but which may not be readily apparent or identified and thus not captured in vulnerability assessments. Existing studies examining social vulnerability to natural disturbances like wildfire or climate change include generalized indicators of vulnerability (e.g., income, education, race) (Johnson Gaither et al. 2011, Walton et al. 2016); however, aggregate-level census measures may not be specific enough to capture people's abilities to adapt to or resist economic or physical disaster. For instance, while women or some minority groups may be more socially vulnerable, these descriptive factors alone are insufficient to explain heightened levels of vulnerability. Rather, the fact that minorities are more likely to have tenuous property titles such as heirs' property may be the underlying reason for higher vulnerability rates among these populations. As a more defined indicator of vulnerability, heirs' status represents a constraint with more predictable outcomes than general demographic characteristics when considering adaptation and resilience to disaster events. Lessons learned in the aftermath of U.S. Gulf Coast storms such as Hurricanes Katrina, Rita, and Maria demonstrate the role of property delineations in the recovery effort. From an applied perspective, the identification of heirs' properties alone at the county level could help authorities to develop *a priori* action plans to help property owners clear title so that problems are minimized in the event of a shock.

LITERATURE CITED

Appalachian Land Ownership Task Force. 1983. Who owns Appalachia? Landownership and its impact. Lexington, KY: University of Kentucky Press. 272 p.

Baab, C.H. 2011. Heir property: a constraint for planners, an opportunity for communities—the legacy of Steve Larkin. Planning and Environmental Law. 63(11): 3–11.

Beamish, J.O.; Goss, R.C.; Atiles, J.H.; Kim, Y. 2001. Not a trailer anymore: perceptions of manufactured housing. Housing Policy Debate. 12(2): 373–392.

Billings, D.B.; Blee, K.M. 2000. The road to poverty: the making of wealth and hardship in Appalachia. Cambridge, MA: Cambridge University Press. 434 p.

Chandler, A.B. 2005. "The loss in my bones": protecting African American heirs' property with the public use doctrine. William & Mary Bill of Rights Journal. 14(1): 387–414.

Consumer Financial Protection Bureau. 2014. Manufactured-housing consumer finance in the United States. http://files.consumerfinance.gov/f/201409_cfpb_report_manufactured-housing.pdf. [Date last accessed: May 7, 2019].

Deaton, B.J. 2005. Land "in heirs": building a hypothesis concerning tenancy in common and the persistence of poverty in central Appalachia. Journal of Appalachian Studies. 11(1–2): 83–94.

Deaton, B.J. 2007. Intestate succession and heir property: implications for future research on the persistence of poverty in central Appalachia. Journal of Economic Issues. 41(4): 927–942.

Deaton, B.J.; Baxter, J.; Bratt, C.S. 2009. Examining the consequences and character of "heir property". Ecological Economics. 68: 2344–2353. doi:10.1016/j.ecolecon.2009.03.009.

Dyer, J.F.; Bailey, C. 2008. A place to call home: cultural understanding of heir property among rural African Americans. Rural Sociology. 73(3): 317–338.

Eller, R.D. 1982. Miners, millhands, and mountaineers: industrialization of the Appalachian South, 1880–1930. Knoxville, TN: University of Tennessee Press. 272 p.

Emergency Land Fund. 1980. The impact of heir property on Black rural land tenure in the southeastern region of the United States. 569 p. http://hdl.handle.net/2027/coo.31924067935720. [Date last accessed: July 2014].

Furman, M. 2014. Eradicating substandard manufactured homes: replacement programs as a strategy. [Paper submitted to Harvard's Joint Center for Housing Studies and Neighbor Works America]. Joint Center for Housing Studies of Harvard University. http://www.jchs.harvard.edu/research/publications/eradicating-substandard-manufactured-homes-replacement-programs-strategy. [Date last accessed: May 7, 2019].

Gaventa, J. 1980. Power and powerlessness: quiescence and rebellion in an Appalachian valley. Urbana, IL: University of Illinois Press. 288 p.

Gaventa, J. 1995. The political economy of land tenure: Appalachia and the Southeast. In: Who owns America? Land and resource tenure issues in a changing environment conference; June 1995. Madison, WI: University of Wisconsin-Madison Land Tenure Center. https://minds.wisconsin.edu/bitstream/handle/1793/60906/rppolitical.pdf?sequence=1. [Date last accessed: June 5, 2019].

Geisler, C. 1995. Land and poverty in the United States: insights and oversights. Land Economics. 71(1): 16–34.

Genz, R. 2001. Why advocates need to rethink manufactured housing. Housing Policy Debate. 12(2): 393–414.

Gilbert, J.; Sharp, G.; Felin, M.S. 2002. The loss and persistence of Black-owned farms and farmland: a review of the research literature and its implications. Southern Rural Sociology. 18(2): 1–30.

Grabbatin, B.; Stephens, J.L. 2011. Wigfall v. Mobley et al.: heirs property rights in family and in law. disClosure: A Journal of Social Theory. 20(14): 133–150.

Heller, M. 1998. The tragedy of the anticommons: property in the transition from Marx to markets. Harvard Law Review. 111: 621–688.

Hitchner, S.; Schelhas, J.; Johnson Gaither, C. 2017. "A privilege and a challenge": valuation of heirs' property by African American landowners and implications for forest management in the southeastern U.S. Smallscale Forestry. 16: 395–417.

Hendryx, M. 2011. Poverty and mortality disparities in Central Appalachia: mountaintop mining and environmental justice. Journal of Health Disparities Research and Practice. 4(3): 44–53.

Jewell, K. 2003. Manufactured housing appreciation: stereotypes and data. Consumers Union. https://advocacy.consumerreports.org/research/manufactured-housing-appreciation-stereotypes-and-data/. [Date last accessed: June 5, 2019].

Johnson Gaither, C.; Poudyal, N.; Goodrick, S. [et al.]. 2011. Wildland fire risk and social vulnerability in the southeastern United States: an exploratory spatial data analysis approach. Forest Policy and Economics. 13: 24–36.

Jones, M.; Koebel, T.; McCoy, A. [et al.]. 2016. Mobile and manufactured homes in central Appalachia and Alabama: age, condition and need for replacement. Virginia Center for Housing Research. https://prosperitynow.org/files/resources/VCHR_Study_Final.pdf. [Date last accessed: June 5, 2019].

Kentucky Housing Corporation. 2013. Housing market analysis. http://www.kyhousing.org/Resources/Planning-Documents/Documents/2015-2019-Market%20Analysis%20Final%20Draft.pdf. [Date last accessed: May 7, 2019].

Mitchell, T.W. 2001. From Reconstruction to deconstruction: undermining Black landownership, political independence, and community through partition sales of tenancies in common. Northwestern University Law Review. 95: 505–580.

Mitchell, T.W. 2005. Destabilizing the normalization of rural Black land loss: a critical role for legal empiricism. Wisconsin Law Review. 2005: 557–615.

Mitchell, T.W.; Malpezzi, S.; Green, R.K. 2010. Forced sale risk: class, race, and the "double discount". Legal Studies Research Paper Series Paper No. 1102. University of Wisconsin Law School. https://lusk.usc.edu/sites/default/files/Forced-Sale-Risk-Class-Race-and-The-Double-Discount-09.27.10.pdf. [Date last accessed: May 7, 2019].

Mumford, L. 1962. The future of the city—part II: yesterday's city of tomorrow. Architectural Record. 132: 139–144.

National Consumer Law Center. 2014. Manufactured housing resource guide: titling homes as real property. https://www.nclc.org/images/pdf/manufactured_housing/cfed-titling-homes.pdf. [Date last accessed: May 7, 2019].

Peluso, N.L.; Humphrey, C.R.; Fortmann, L.P. 1994. The rock, the beach, and the tidal pool: people and poverty in natural resource-dependent areas. Society & Natural Resources. 7(1): 23–38.

Pendall, R.; Theodos, B.; Franks, K. 2012. Vulnerable people, precarious housing, and regional resilience: an exploratory analysis. Housing Policy Debate. 22(2): 271–296.

Pippin, J.S.; Jones, S.; Johnson Gaither, C. 2017. Identifying potential heirs properties in the Southeast: a new GIS methodology utilizing mass appraisal data. e-Gen. Tech. Rep. SRS-225. Asheville, NC: U.S. Department of Agriculture Forest Service, Southern Research Station. 58 p.

Pruitt, L.R.; Sobczynski, L.T. 2016. Protecting people, protecting places: what environmental litigation conceals and reveals about rurality. Journal of Rural Studies. 47: 326–336.

Rivers, F.R. 2007. The public trust debate: implications for heirs' property owners along the Gullah coast. Vermont Law School. https://works.bepress.com/faith_rivers/3/. [Date last accessed: June 5, 2019].

Schelhas, J.; Hitchner, S.; Johnson Gaither, C.; Jennings, V. 2017. "Sunshine, sweat, and tears": African-American ties to land and forests in the south. e-Gen. Tech. Rep. SRS-220. Asheville, NC: U.S. Department of Agriculture Forest Service, Southern Research Station. 154 p.

Social Explorer. 2017a. U.S. Census Bureau, American Community Survey 2016, 2012–2016 (5-year estimates). Tables A10032: housing units in structure. https://www.socialexplorer.com [password protected]. [Date last accessed: May 7, 2019].

Social Explorer. 2017b. U.S. Census Bureau, American Community Survey 2016, 2012–2016 (5-year estimates). Table A00001: total population; Table A13003B: poverty status for population Age 18 to 64; Table A14006: median household income; Table A01004: median age by sex; Table A20002: health insurance; Table A17005: unemployment rate for civilian population in labor force 16 years and over. https://www.socialexplorer.com [password protected]. [Date last accessed: June 5, 2019].

Teaford, J.C. 2000. Urban renewal and its aftermath. Housing Policy Debate. 11(2): 443–465.

U.S. Census Bureau. 2018. Median and average sales prices of new homes sold in the United States. https://www.census.gov/construction/nrs/pdf/uspricemon.pdf. [Date last accessed: May 7, 2019].

Walton, Z.L.; Poudyal, N.C.; Hepinstall-Cymerman, J. [et al.]. 2016. Exploring the role of forest resources in reducing community vulnerability to the heat effects of climate change. Forest Policy and Economics. 71: 94–102.

West, P.C. 1994. Natural resources and the persistence of rural poverty in America: a Weberian perspective on the role of power, domination, and natural resource bureaucracy. Society and Natural Resources. 7(5): 415–427.

Williamson, K.D. 2014. The White ghetto. National Review. January 9. https://www.nationalreview.com/2014/01/white-ghetto-kevin-d-williamson/. [Date last accessed: June 5, 2019].

Wubneh, M.; Shen, G. 2004. The impact of manufactured housing on adjacent residential property values: a GIS approach based on three North Carolina counties. Review of Urban and Regional Development Studies. 16(1): 56–73.

Yarnal, B.; Aman, D. 2009. An examination of mobile homes in rural Pennsylvania. The Center for Rural Pennsylvania. http://www.rural.palegislature.us/Mobile_Homes09.pdf. [Date last accessed: June 5, 2019].Sources: Parcel data: Digital Map Products and CoreLogic for 2017–2018. Manufactured housing data: Social Explorer (2017a).

Legal Reform:

Native American Buyback,
Uniform Partition of Heirs Property Act,
and Future Profit Sharing

Divided Interests: Growing Complexity of Fractionated Property Rights in Indian Country and Possible Resolutions

Patrice H. Kunesh

*[**Note:** Much of this material is derived from the* Tribal Leaders Handbook on Homeownership*, published by the Center for Indian Country Development, July 2018.]*

Indian Country connotes an enduring interconnection between land and people.[1] It also is a complex web of historical, legal, and social forces that make it unnecessarily difficult or impossible for American Indian[2] people to use their lands efficiently. One area of increasing complexity is the fractionation of their property interests, where ownership of land continually descends from one generation to another into smaller and smaller individual shares. Also known as "the Indian heirship problem," Federal assimilationist policies initiated in the late 19th century made fractionation of allotted Indian land the default succession plan and wreaked havoc for generations. As recent as 2017, the U.S. Department of the Interior Bureau of Indian Affairs (BIA) estimated that 2.9 million acres across 150 reservations are owned by approximately 243,000 unique owners managed jointly by tribal governments and the BIA. Fractionation and bureaucratic oversight result in significant barriers to efficient land use and capital access for land development.

Because of the centrality of land to economic and community development, as well as the unique status of trust land, the Center for Indian Country Development (CICD) at the Federal Reserve Bank of Minneapolis has made land a primary area of focus, with the aim of supporting its optimal and productive use. Established in 2015 with the mission of helping self-governing Native communities attain *their* economic goals, the CICD conducts economic research and engages with Native communities at a national level around issues related to social and financial capital, such as housing and homeownership, education, and business development. Governance is the foundation of the CICD's strategic framework for economic development. The CICD believes that tribes can make better policy decisions and build stronger economies for their citizens when they have relevant and current data and helpful resources. The Center has created several such resources: Reservation Business Profiles (https://www.minneapolisfed.org/indiancountry/resources/reservation-profiles), Map of Native American Financial Institutions (https://www.minneapolisfed.org/indiancountry/resources/mapping-native-banks), and the *Tribal Leaders Handbook on Homeownership* (https://www.minneapolisfed.org/indiancountry/resources/tribal-leaders-handbook-on-homeownership).

[1] As used in this paper, the term "Indian Country" refers to lands held by American Indian tribes and individuals, mainly reservations. Between 1887 and 1934, the Federal government took nearly two-thirds of reservation lands from the tribes for non-Indian settlement. Appalling community destabilization and abject poverty ensued. The Federal government subsequently deemed the remaining lands to be held in trust indefinitely and subject to restrictions on sale and encumbrance, commonly referred to as "trust land." Today, the vast majority of land on American Indian reservations, approximately 60 million acres, is trust land. Urban Indian communities, representing a significant percentage of the Native population, often with strong ties to the reservations, are not trust lands.

[2] The term "American Indian" is synonymous with Native American and includes Alaskan Native people. As used in the paper, the terms "Indian" and "Native" also are used interchangeably.

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HOW DID INDIAN LAND TENURE GET SO COMPLICATED?

In short, poorly constructed Federal policies and overly zealous bureaucracy have resulted in the current state of Indian land tenure. The American Indian reservation system was created for two general purposes: to separate Native people from their lands for White settlement and to regulate Indian affairs. The BIA supervised every aspect of life on the reservation—from government and religious practices to housing, jobs, and education. The reservation system created a deep and desperate culture of dependency and persistent poverty. That policy quickly morphed into an overt objective of eliminating reservations altogether and forcing American Indians to assimilate into mainstream society.[3]

The genesis of most of these lands issues is the General Allotment Act of 1887 (commonly called the Dawes Act), 24 Stat. 388 (25 U.S.C. § 331), which authorized the President to allot every Indian reservation into 80- or 160-acre parcels. The purpose of the legislation was to reduce and eliminate the reservation system established by historic treaties. To do this, the Dawes Act attempted to force American Indian people to assimilate into White culture. Among the many assimilation experiments (see discussion of boarding schools in note 3) was the allotment program, which was designed to transform communal, tribal living into private farms on individually owned parcels of land called allotments. The expectation was that the land would be farmed or ranched. Reservation lands remaining after allotment, the so-called "surplus" lands, were taken by the Federal government and opened to White settlement.

As originally envisioned, allotted parcels were to be held in trust by the United States for no more than 25 years. During this period, allotments would be inalienable and exempt from State taxation and jurisdiction. The Dawes Act anticipated that after 25 years of Federal trusteeship, Indian owners would be sufficiently assimilated and capable of managing their land, after which the United States would patent (deed) the land to the allottee in fee.

When an allottee died during this trust period, the United States would determine the heirs and distribute the property in accordance with State law of descent and distribution, bypassing completely tribal customs and the individual property owner's intent. It was not until a 1910 amendment that allottees were allowed to use a will to direct their property interests to specified heirs, but still only with Federal approval and probate in a Federal administrative forum. Even then, many Indian allottees did not prepare wills, leaving their ownership interests to be divided according to State law. In addition, because the United States holds land in trust only for Indians then and now, interests passing to non-Indian spouses and heirs must come out of trust status and become subject to State taxation and other State law. This situation results in land coming out of trust status, and it becomes taxable. Observers note that many acres of land have been lost through non-payment of taxes, compounding boundary and jurisdiction issues.

The Dawes Act and the subsequent probate system demonstrate the often contradictory and incongruent policy prerogatives of the United States. On the one hand, the Federal government is eager to decrease its financial responsibilities to tribes and Native people, yet on the other hand, it vehemently asserts its paternalistic oversight over Indian affairs. Congress halted the devastation of allotment in 1934 with the Indian Reorganization Act, 25 U.S.C. § 461, *et seq.,* which banned further allotment of reservation lands, extended the trust period indefinitely for remaining allotments, authorized the acquisition of new land in trust for tribes, and strengthened support for tribal self-governance.

Interesting parallels can be made between the Federal government's role as trustee over the property and natural resources of American Indian tribes and the historical role that courts (also as functionaries of the Federal government) inadvertently played in usurping land for other marginalized peoples—for instance, African Americans in the Black Belt South, poor Whites in Appalachia, and Hispanics in the Southwest. (See Mitchell et al. in these proceedings for how court-ordered partition sales of heirs' property likely resulted in significant land loss for African Americans; also, see Johnson Gaither in these proceedings for court appropriation of land in Appalachia.)

FRACTIONATION: DIVIDED OWNERSHIP

Under Federal Indian probate laws, when an Indian allottee died, his or her property descended to heirs as undivided "fractional" interests in the allotment (tenancy-in-common). The land however, remained physically intact.

[3] One of the most damaging policies was the Federal government's Indian Residential Schools program, commonly known as boarding schools. During the late 19th and mid-20th centuries, thousands of Indian children were removed from their families and sent to residential schools far away from reservations. The infamous Carlisle Indian Industrial School, founded by Richard Henry Pratt in 1879 on a former military installation in Pennsylvania, became a model for the 25 other schools established by the BIA. Pratt's proclaimed assimilationist policy was "Kill the Indian and save the man." This was accomplished by removing anything from the child that could be identified as "Indian"—braids were cut off, clothes were burned, and Native languages and cultural practices were prohibited. In their place, students were forced to speak English and received vocational training with strict military protocols. After years of separation, Native students were sent back to the reservation only to face the shock of another cultural dissonance with their own families. The legacy of the boarding school program, an experiment in legalized discrimination, is pervasive intergenerational trauma.

As a result, heirs of an original allottee own common and undivided interests in the same allotted parcel. Due to a variety of issues, primarily the now federalized probate system for Indian lands and dismissal of cultural property rights, many Native people are unfamiliar with the concept of using a will to pass their property to the next generation. As a result, original allotments now have hundreds and even thousands of distinct individual owners, oftentimes sharing a common interest in a minute fraction of land. In addition, an allottee's descendant could own multiple fractionated interests in several different parcels through inheritance from different family branches. As the number of owners grows exponentially (fig. 1), the cost of land administration increases, and the value of the land and income derived therefrom become *de minimus*—much less than what it costs the Federal government to process the payment.

Furthermore, no single owner can use of any part of the land without consent of the other owners, nor can the land be leased, logged, grazed, or mined without Federal approval and consent of at least a majority of ownership. This heirship pattern makes it nearly impossible for any one owner to actively and efficiently manage the land for agriculture, business development, or a home site, all uses that would improve quality of life for Indian people living on reservations.

RESOLVING INDIAN LAND FRACTIONATION

Resolving the Indian Country fractionation issue should be one of most pressing administrative priorities for the Federal government. Over the years, Congress has attempted to fix this fragmented system through four prominent strategies:

- Encourage land consolidation through the Land Buy-Back Program for Tribal Nations.
- Promote gift deed conveyances, wills, and estate planning through the American Indian Probate Reform Act of 2004.
- Relieve Federal bureaucratic burdens on land use while returning control to tribes through the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act of 2012.
- Promote tribal community response and revive tribal customs.

The Land Buy-Back Program for Tribal Nations—Established in 2014, this ambitious program implements the land consolidation component of the *Cobell* Settlement, which provided $1.9 billion to purchase fractional interests in trust or restricted land from willing

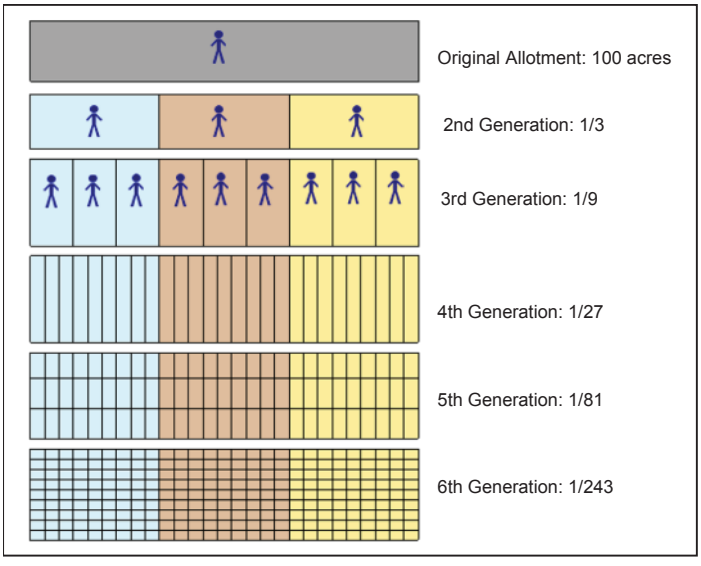

Figure 1—A simple example of a 100-acre parcel owned initially by an original allottee succeeded by three offspring in each generation. Each of the three children in each new family inherits a one-third interest in their parents' interest, resulting in 243 heirs by the sixth generation.

sellers at fair market value. Consolidated interests are immediately restored to tribal trust ownership for uses that benefit the reservation community and tribal members. According to the BIA, as of September 2017, the program had purchased more than 2 million acres from more than 700,000 fractional interests on almost 40,000 tracts across 45 reservations.

The American Indian Probate Reform Act of 2004—This Act created a nationwide Indian probate code and changed the way trust estates are distributed to heirs. In effect, it replaced State law with a Federal probate code. The Act applies to all individually owned trust lands unless a tribe has its own probate code. Its primary purposes are to: limit and reduce fractionation; encourage estate planning and drafting wills; and maintain land in trust status.

Writing a will or using a gift deed to convey land is very important for several reasons. For one, the owner has more control over property and assets. For another, the trust land retains trust or restricted status if it passes to eligible heirs. Overall, fractionated ownership is reduced or eliminated, and land with consolidated ownership interests becomes more usable and economically productive.

The HEARTH Act of 2012—Leases of trust lands play an important role in tribal housing and business development since trust lands cannot be readily sold or encumbered. In Indian Country, mortgage financing typically is secured by a leasehold interest. Delays in approving individual leases cause a great deal of frustration to homebuyers and lenders alike.

In 2012, in a major shift of authority over tribal lands, Congress amended the Long-Term Leasing Act through the HEARTH Act. The HEARTH Act amendments establish an alternative land leasing process for tribes to negotiate and enter into leases with minimal involvement from the BIA. Through the HEARTH Act, Indian tribes lease tribal trust lands directly pursuant to tribal law, without further Secretarial approval. This enables tribes to exercise more decision-making authority over land-use decisions and engage more efficiently in larger scale home ownership and business development.

The passage of the HEARTH Act amendments was nationally lauded by tribal leaders and tribal organizations as a valuable tool that would, among other things, empower tribes to realize their potential for economic growth and job creation on tribal lands; increase community development; and strengthen tribal self-determination.

Tribal community response—The most important work will be, as ever, in tribal communities. There is a tremendous need to impart basic information about trust lands to new generations of Native landholders. A special emphasis in this communication should be that land is a valuable asset, in economic as well and socio-cultural and historical terms. In addition, trust property estate planning assistance needs to be readily available for Native people. Support for drafting wills and creating gift conveyances can come from diverse parts: the Department of the Interior and the BIA's tribal realty and probate offices; tribal and private, non-profit legal services programs; law school clinical programs and the private estate planning bar; and community development practitioners across the country.

Equally important is addressing the central issue of who is Indian. The political and economic stakes in such discussions are obvious and compelling—who is eligible to share in government services and economic development programs; who is subject to tribal jurisdiction; and, ultimately, who has the right to hold land in trust. It is up to the tribes, as self-governing, self-determining nations, to determine their future.

Finally, a word of caution. Most solutions to fractionation are framed around tribal ownership, essentially the consolidation of land back to communal ownership. Such emphasis on total tribal ownership may overshadow the benefits of individual landowners and private development to enhance a more diverse and vibrant reservation economy. Where concentrations of collective land ownership occur, economic and political development could be stymied. To fully realize self-determination, Indian property rights and land reform thus should be transformed by the people themselves. Community values that promote family relationships and support individual interests can concurrently advance the betterment of the tribe as a whole.

These are not modest challenges, and undertaking these different paths requires extensive resources and uncompromising commitment. Fortunately, Native people have been adept in the art of survival. They may do so again in securing their lands.

Historic Partition Law Reform: A Game Changer for Heirs' Property Owners

Thomas W. Mitchell

Abstract——Over the course of several decades, many disadvantaged families who owned property under the tenancy-in-common form of ownership—property these families often referred to as heirs' property—have had their property forcibly sold as a result of court-ordered partition sales. For several decades, repeated efforts to reform State partition laws produced little to no reform despite clear evidence that these laws unjustly harmed many families. This paper addresses the remarkable success of a model State statute named the Uniform Partition of Heirs Property Act (UPHPA), which has been enacted into law in several States since 2011, including in five southern States. The UPHPA makes major changes to partition laws that had undergone little change since the 1800s and provides heirs' property owners with significantly enhanced property rights. As a result, many more heirs' property owners should be able to maintain ownership of their property or at least the wealth associated with it.

INTRODUCTION

Against great odds, many African Americans were able to begin acquiring property at the conclusion of the Civil War. For many of these African Americans, acquiring property represented a dramatic change in status as they transitioned from legally being the property of their former slaveowners to being property owners themselves. All told, between the end of the Civil War and 1920, African Americans acquired at least 16 million acres of agricultural land.[1] They also acquired a significant amount of non-agricultural property as well, including many oceanfront properties.

Nearly 100 years later, African Americans struggle to maintain their status as property owners. They have experienced substantial involuntary land loss, most likely totaling in the millions of acres over the course of the past 100 years. This involuntary land loss is attributable, among other causes, to actual and threatened violence,[2] discrimination,[3] and various legal actions that

[1] Thomas W. Mitchell, *Destabilizing the Normalization of Rural Black Loss: A Critical Role for Legal Empiricism*, 2005 Wis. L. Rev. 557, 563 (2005).

[2] See Todd Lewan, Dolores Barclay, and Allen G. Breed, *Landownership Made Blacks Targets of Violence and Murder* (pt. 2), Authentic Voice (Dec. 3, 2001), https://theauthenticvoice.org/mainstories/tornfromtheland/torn_part2/ [Date last accessed: June 1, 2019].

[3] *See* Civ. Rts. Action Team, U.S. Dep't of Agric., Civil Rights at the United States Department of Agriculture 30 (Feb. 1997) (stating that minority farmers "have lost significant amounts of land and potential farm income as a result of [United States Department of Agriculture (USDA)] discrimination."). The *Pigford v. Glickman* class action lawsuit filed by Black farmers against the USDA and the subsequent *In re Black Farmers Discrimination Litigation* (commonly referred to as *Pigford II)* involved more than 55,000 discrimination claims by Black farmers against the USDA for alleged discrimination that occurred between January 1, 1981 and December 31, 1996. See Office of the Monitor, *National Statistics Regarding Pigford v. Vilsack Track A Implementation as of February 16, 2012* (2012), http://media.dcd.uscourts.gov/pigfordmonitor/stats/ [Date last accessed: Apr. 19, 2019]; see also Ombudsman, *In re Black Farmers — Ombudsman*, http://www.inreblackfarmersombudsman.com [Date last accessed: Apr. 19, 2019]. In the *Pigford* case, 15,645 claims were approved, and in the *In re Black Farmers* case, at least 18,310 claims were approved. Many of the claimants in the *Pigford* and the *In re Black Farmers* cases claimed that they lost their land as a result of USDA discrimination. Conservatively, one reasonably could assume that the claimants in these two cases alone involuntarily lost several hundred thousand acres of land as a result of USDA discrimination that occurred between 1981 and 1996. More broadly, many other Federal government reports dating back to 1965 documented widespread discrimination by the USDA against Black farmers, oftentimes resulting in involuntary land loss. *See* Thomas. W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community Through Partition Sales of Tenancies in Common*, 95 Nw. U. L. Rev. 505, 529 n. 146 (2001) [hereinafter Mitchell, *Reconstruction*]. Unfortunately, discrimination continues to drive some Black farmers out of farming, depriving some of their land as well. See Debbie Weingarten, *'It's Not Fair, Not Right': How America Treats its Black Farmers*, Guardian (Oct. 30, 2018), https://www.theguardian.com/world/2018/oct/30/america-black-farmers-louisiana-sugarcane [Date last accessed: May 3, 2019].

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have culminated in many forced sales and other forced transfers.[4] Further, over the course of the past 15 years, African Americans have experienced a significant drop in their rates of home ownership. The African-American home ownership rate now stands at 40.6 percent as compared to the overall home ownership rate of 64.1 percent and the White American home ownership rate of 73.1 percent.[5] The current African-American home ownership rate represents a substantial decrease from the high water mark for African-American home ownership, which was 49.1 percent in 2004,[6] and it is significantly lower than the African-American home ownership rate in 1970, which was 42.6 percent.[7] What this means in context is that more than 50 years after the Federal Fair Housing Act became law, a law many believed would substantially improve many housing conditions and opportunities for African Americans and other subordinated people, the African-American home ownership rate in fact has not improved, but instead has deteriorated. In some important ways, the challenges African Americans have experienced with retaining their rural and urban properties serve as the canary in the coal mine for other disadvantaged groups of American property owners.

African Americans have lost their property involuntarily as a result of certain legal and extralegal actions. The legal actions that have resulted in forced transfers of Black-owned properties over the course of many decades include foreclosure, eminent domain, adverse possession, tax sales, and partition sales.[8] Certainly, over the course of the past decade or so, a very large number of African-American homeowners have lost their homes in foreclosure, including a disturbingly large number who should have qualified for prime loans but who were instead steered by various lenders into agreeing to take out predatory, subprime loans.[9]

This paper focuses upon the challenges disadvantaged families, including African-American families, have experienced in trying to maintain ownership of their family-owned property.[10] In many instances, families have ended up in conflicts with those that have tried to use a property law known as partition law to force sales of these family properties. In some of these families, family ownership of particular rural properties dates back to the latter part of the 1800s, and family ownership of particular urban properties dates back to the mid-1900s.

The paper begins by describing how these families have been disadvantaged by partition law, resulting in a large number of families losing their property involuntarily over the course of many decades. The paper then reviews critically important State-level reform of partition law, which began occurring in 2011 despite the previous widespread belief that partition law would never be reformed to benefit heirs' property owners. After reviewing these historic developments in partition law reform at the State level, this paper next provides an overview of the new Federal Farm Bill's provisions to assist disadvantaged farmers and ranchers who own heirs' property, an initiative many rural advocates have referred to as a potential game changer for disadvantaged farmers and ranchers given that Congress had done precious little to help heirs' property owners up until passage of this Farm Bill. The paper concludes with commentary about how the unexpected, even dramatic success of State-level, partition law reform efforts and the new Federal interest in addressing longstanding challenges for heirs' property owners could be leveraged to generate additional legal reforms and policy development and implementation. The additional legal reforms and policy initiatives would be designed to make heirs' property ownership more viable and valuable for those who own such property, including in economic, environmental, cultural, and other ways.

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[4] See *supra* note 3 at 511 and accompanying text.

[5] U.S. Census Bureau, Quarterly Residential Vacancies and Homeownership, Second Quarter 2019 (2019), http://www.census.gov/housing/hvs/files/currenthvspress.pdf [Date last accessed: Aug. 22, 2019]. For purposes of this paper, the White home ownership rate refers to the non-Hispanic White home ownership rate.

[6] U.S. Census Bureau, Table 16 Homeownership Rates by Race and Ethnicity of Householder: 1994 to Present, https://www.census.gov/housing/hvs/data/histtabs.html [Date last accessed: Apr. 19, 2019]. In 2004, the overall home ownership rate in the United States in the second quarter was 69.2 percent, and the White home ownership rate was 76.2 percent. *Id. See Homeownership Rates by Area: 1960 to 2004*, Census, https://www.census.gov/housing/hvs/files/annual04/ann04t12.txt [Date last accessed: Apr. 19, 2019].

[7] U.S. Census Bureau, Historical Census of Housing Tables: Ownership Rates (2011), https://www.census.gov/hhes/www/housing/census/historic/owner.html [Date last accessed: Apr. 19, 2019]. *See also* Wilhelmina A. Leigh and Danielle Huff, African Americans and Homeownership: Separate and Unequal, 1940 to 2006, Jt. Cent. Polit. Econ. Stud. Brief #1, 3 (2007). In 1970, the White American home ownership rate was 66.8 percent. *Id.* In that same year, the overall home ownership rate was 62.9 percent. See U.S. Census Bureau, Historical Census of Housing Tables: Ownership Rates (2011), https://www.census.gov/hhes/www/housing/census/historic/owner.html [Date last accessed: Apr. 19, 2019].

[8] Mitchell, *Reconstruction, supra* note 3 at 511.

[9] Mechele Dickerson, Homeownership and America's Financial Underclass: Flawed Premises, Broken Promises, New Prescriptions 166–71 (2014).

[10] For purposes of this paper, disadvantaged means low-income or low-wealth individuals or families and/or people who are members of racial or ethnic groups who have faced significant discrimination in the United States over the course of many generations.

HEIRS' PROPERTY AND PARTITION LAW

One enduring challenge African-American families as well as many other families have faced in their efforts to maintain ownership or at least meaningful control of their property has been the perils of what is commonly referred to as heirs' property. Heirs' property ownership technically is a subset of tenancy-in-common ownership, the most prevalent type of common ownership of real property in the United States.[11] Those who own a fractional interest in tenancy-in-common property do not own any particular "piece of the property" but instead own a fractional interest in the entire property, akin to how people own shares in a corporation, which explains why such property ownership often is referred to as undivided ownership.

Heirs' property typically results from property being transferred from one generation to another by intestate succession as a result of individuals who failed to make wills or to utilize other advisable estate planning techniques. If someone who owns real property dies without a will, those deemed under State intestacy laws to be the heirs of the deceased person may be entitled to an ownership interest in real property owned by the decedent. If two or more heirs of a decedent are entitled to receive an ownership interest in real property, these heirs will own the property under a tenancy in common as mandated by intestate succession laws throughout the country.[12]

Overall, intestacy is not a trivial phenomenon. Although no robust national study of intestacy rates ever has been conducted due to the vexing methodological challenges conducting such a survey would entail,[13] many discrete studies of intestacy have been done that have yielded valuable data.[14] These studies do make it clear that a very substantial percentage of people in this country do not make wills or have other estate plans, with the rate of intestacy ranging from 41 to 68 percent in a significant subset of these studies.[15] Not surprisingly, low-income Americans and Americans who have little wealth have particularly high rates of intestacy,[16] which explains why many Americans own heirs' property whether they be African Americans, Hispanics/Latinos, White Americans, or Native Americans who own property in fee simple.[17]

Nevertheless, certain studies also have revealed that there is a substantial racial element to the patterns of intestate succession. To this end, studies have revealed a significant gap in rates of will-making between White Americans and non-Whites, including between White Americans and African Americans. For example, one study revealed that 52 percent of White Americans but only 32 percent of African Americans had made wills or had made other estate plans.[18] A more recent unpublished working paper by three economists reveals an even greater disparity; approximately 64 percent of Whites in the study had made a will, but only approximately 24 percent of the Black

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[11] Thomas W. Mitchell, *Reforming Property Law to Address Devastating Land Loss*, 66 Ala. L. Rev. 1, 9, 29 (2014) [hereinafter Mitchell, *Reforming Property Law*].

[12] Id. at 9.

[13] Reid Kress Weisbord, *Wills for Everyone: Helping Individuals Opt Out of Intestacy*, 53 B.C. L. Rev. 877, 877 (2012).

[14] Danaya C. Wright, *Inheritance Equity: Reforming the Inheritance Penalties Facing Children in Nontraditional Families*, 25 Cornell J.L. & Pub. Pol'y 1, 3 n.4 (2015).

[15] See, e.g., Adam J. Hirsch, *Inheritance on the Fringes of Marriage*, 2018 U. Ill. L. Rev. 235, 240 n. 21 (noting December 2016 study reporting a 52-percent intestacy rate); Wendy S. Goffe and Rochelle L. Haller, *From Zoom to Doom? Risks of Do-It-Yourself Estate Planning*, Est. Plan., Apr. 2011, at 27, 27 (reporting a 65-percent intestacy rate); Alyssa A. DiRusso, Testacy and Intestacy: The Dynamics of Wills and Demographic Status, 23 Quinnipiac Prob. L. J. 36, 41 (2009) (reporting a 68-percent intestacy rate); Mary L. Fellows, Rita J. Simon, and William Rau, *Public Attitudes About Property Distribution at Death and Intestate Succession Laws in the United States*, 1978 Am. B. Found. Res. J. 321, 337 (reporting a 55-percent intestacy rate); John R. Price, *The Transmission of Wealth at Death in a Community Property Jurisdiction*, 50 Wash. L. Rev. 277, 295 (1975) (reporting a 41-percent intestacy rate); Kerri Anne Renzulli, *Half of Americans Don't Have a Will. Here's How to Fix That for Your Family*, Time Money (Nov. 30, 2016), http://time.com/money/4581727/estate-planning-inheritance-leave-money-will/ [Date last accessed: May 3, 2019, archived at https://perma.cc/R3LG-Y296] (reporting a 64-percent intestacy rate).

[16] Palma Joy Strand, *Inheriting Inequality: Wealth, Race, and the Laws of Succession*, 89 Or. L. Rev. 453, 492 (2011); Heather K. Way, *Informal Homeownership in the United States and the Law*, 29 St. Louis U. Pub. L. Rev. 113, 151 (2009); Alyssa A. DiRusso, *Testacy and Intestacy: The Dynamics of Wills and Demographic Status*, 23 Quinnipiac Prob. L.J. 36, 42, 50 (2009).

[17] *See* Way, *supra note* 16 at 152. As an aside, high rates of intestacy in certain disadvantaged communities explain how the colloquial term heirs' property (or "heir property") first came into existence within these communities. See Mitchell, *Reforming Property Law, supra* note 11 at 29. There are many parallels between heirs' property ownership and so-called Indian trust land in terms of how both types of properties easily can become fractionated, including because of intestacy, and how such fractionation inhibits the owners from being able to realize much of the potential benefits of their property ownership. *See* Jessica A. Shoemaker, *No Sticks in my Bundle: Rethinking the Indian Land Tenure Problem*, 63 U. Kan. L. Rev. 383, 441 (2015). Nevertheless, there are many important ways in which heirs' property ownership differs from the ownership of Indian trust land, which results in these two forms of common real property ownership creating distinct problems for those who have an ownership interest in one form versus the other. *Id.* at 441–442.

[18] *See* Strand, *supra* note 16 at 492 n. 201.

respondents had made a will.[19] Further, the study reveals that the most highly educated Black respondents—those with a college degree or more—had by far the highest will-making rates among the Black respondents but dramatically lower rates of will-making than the least educated White American respondents, those without a high school degree who constitute the group of White Americans with the lowest will-making rates.[20] These data also reveal a similar pattern of will-making for Hispanics as compared to non-Hispanics (see table 1).

Further, a survey from the early 1980s of 1,708 Black landowners in five southern States revealed that 81 percent of the landowners had not made a will.[21] Though this survey had no comparative data on will-making rates for similarly situated White landowners, it is likely that the Black landowners made wills at a significantly lower rate than White landowners based upon what is known about other racial data on will-making more generally.

Racial differences in patterns of estate planning have been under-theorized and have not been the subject of much rigorous scholarship, including empirical, historical, or socio-legal scholarship.[22] Some theories have been offered to explain high rates of intestacy among African Americans. For example, some have claimed that African Americans often have elected not to make wills due to their distrust of a legal system that did not adequately protect their property rights, and others have claimed that African Americans intentionally have opted to transfer their property via intestacy because intestate succession is more closely aligned with West African customary, succession practices.[23] However, these particular theories are contested and have not been evaluated in any rigorous way.[24] It bears mentioning that others have claimed that low will-making rates for African Americans represent a present day manifestation of the ways in which African Americans after the conclusion of the Civil War were deprived of access to attorneys and even to basic information about estate planning.[25] Though quite plausible, this theory also has not been verified in any meaningful way.

Unfortunately, heirs' property ownership can be problematic for a number of reasons. For purposes of this paper, I will focus mostly (though not exclusively) on the challenges families have faced in beating back efforts of real estate speculators, other family members, and some others who often have sought to force heirs' property to be sold. Such efforts to force sales of heirs' property often have occurred even in cases in which a clear majority of the family members have desired to retain ownership of their property, property that often has been owned by these families for generations.

As indicated, heirs' property ownership is a subset of tenancy-in-common ownership. Tenancy-in-common ownership under the background default rules established by States represents the most unstable form of common ownership of real property in the United States.[26] The inherent instability of tenancy-in-common ownership arises from the legal rules that determine how an individual tenant in common can part ways with his or her cotenants, sometimes referred to as the rules governing exit from common ownership.

Partition law governs exit from tenancy-in-common ownership, and any tenant in common, irrespective of the size of his or her fractional interest can file a partition action. Therefore, a tenant in common, for example, who owns a 50-percent, 10-percent, 1-percent, or 1/1,000th-percent interest can file a partition action and further can request a court to order a forced sale of the property as described herein. This is just one aspect of partition law that is counterintuitive to many heirs' property owners, many of whom assume that heirs' property only can be sold if all of the cotenants consent to a sale.[27]

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[19] Marco Francesconi, Robert A. Pollak, and Domenico Tabasso, *Unequal Bequests* (Nat'l Bureau of Econ. Research, Working Paper No. 21692, 2015) (data can be found in the online appendix to the unpublished manuscript and in unpublished table on file with author).

[20] *Id.*

[21] Emergency Land Fund, The Impact of Heir Property on Black Rural Land Tenure in the Southeastern Region of the United States 65, 113 (1984) [hereinafter The Impact of Heir Property].

[22] See DiRusso, *supra* note 16 at 74 (DiRusso states: "There is a relative lack of scholarship in the application of theories relating to gender and race to trusts and estates.").

[23] Mitchell, *Reconstruction, supra* note 3 at 519–520. For example, some scholars have argued that given the large number of different ethnic groups represented among those who were brought to this country as slaves from Africa and the ways in which the slavery experience had an impact upon transforming many aspects of traditional African culture, one cannot assume that high rates of intestacy among African-American property owners represents an internalization of some theoretical traditional, pan-ethnic African succession practices. *Id.* at note 83 and accompanying text.

[24] *Id.* at 519–520.

[25] Faith Rivers, *Inequity in Equity: The Tragedy of Tenancy in Common for Heirs' Property Owners Facing Partition in Equity*, 17 Temp. Pol. & Civ. Rts. L. Rev. 1, 52 (2007).

[26] See Mitchell, *Reforming Property Law, supra* note 11 at 33.

[27] Mitchell, *Reconstruction, supra* note 3 at 521 (citing a study that revealed that nearly 75 percent of heirs' property owners held this belief).

Table 1—Racial and ethnic disparities in will-making

	Respondent has a will	Respondent has a will, by education level		
		No high school	High school	College and above
	percent			
All respondents	56.93	47.13	58.92	65.71
White	64.23	56.76	65.26	72.04
Black	23.68	20.15	22.89	32.34
Other	27.24	20.79	34.54	38.63
Non-Hispanic	60.66	54.26	61.06	68.09
Hispanic	19.38	14.57	28.30	31.67

Note: data presented is from two separate tables in the unpublished working paper by Francesconi, Pollak, and Tobasso (see footnote 19).

In resolving a so-called partition action filed by one or more tenants in common, judges tend to consider two primary remedies. First, judges can order partition in kind, sometimes referred to as partition by division, which results in the property being divided into separately titled parcels and then allocated in some way among the various tenants in common. Oftentimes, if a judge orders partition in kind in a case in which there are three or more cotenants, the cotenant who seeks to exit the common ownership is allocated one part of the property and the remaining cotenants as a group are allocated the other part of the property. Alternatively, a judge can order partition by sale, which results in the property being forcibly sold with the proceeds of the sale—minus various transaction costs that must first be paid, which can be quite substantial—distributed to the various tenants in common pro rata based upon each tenant in common's fractional interest in the property.

The background partition law in a clear majority of States in this country ostensibly favors partition in kind given that this remedy is viewed as being more consistent with preserving important property rights for tenants in common. In fact, judges for a very long time had considered ordering a forced sale of someone's property to be an extraordinary remedy, one that they would order only when a physical division of a parcel of property simply was not feasible. Notwithstanding the background partition law and the long-held judicial norms just referenced, a number of State court judges throughout the United States began routinely ordering partition by sale in the early to mid-1900s.[28] Judges began doing so even in cases in which the courts quite feasibly could have divided the properties in question. Furthermore, in many of these cases, the cotenant who requested the court to order partition by sale merely owned a very small fractional interest and sometimes this cotenant was a real estate speculator or some other non-family member who acquired their interest from a family member shortly before requesting a court to order a forced sale.[29] Nonetheless, in many of these cases, judges ordered partition by sale, including cases in which those who owned an overwhelming majority of the interests in heirs' property that had been in a family for generations tried unsuccessfully to dissuade the courts from ordering partition by sale.

Heirs' property ownership often is even more unstable than more conventional tenancies in common. This enhanced instability arises from the interaction between multi-generational patterns of intestate succession among certain disadvantaged groups, the default partition law, and the low-income/low-wealth status of many heirs' property owners.

Given that it only takes one tenant in common—no matter how small her fractional interest—to request a court to order a forced sale, each additional tenant in common in any given tenancy in common increases the instability of the common ownership.[30] Unfortunately, it is not uncommon for heirs' property to be owned by 30, 40, or

[28] *Id.* at 515.

[29] Thomas W. Mitchell, Stephen Malpezzi, and Richard K. Green, *Forced Sale Risk: Class, Race, and the "Double Discount*," 37 Fla. St. U. L. Rev. 589, 612 (2010).

[30] Transferring real property by intestacy can be disadvantageous for other reasons. At a very basic level, people who engage in estate planning frequently choose to transfer their property in a very different way than the property otherwise would be transferred under intestacy, which means that property transfers by intestacy often result in distributions decedents would have considered undesirable for one reason or another. Further, intestate succession can result in heirs incurring greater tax liabilities than they otherwise would have incurred if the property had been transferred utilizing more sophisticated estate planning techniques. Ken Abdo, Gina DeConcini, and Tim Matson, *Death, Taxes, & Rock N' Roll: Music, Law, and Aging Artist's Estates*, 33 SPG Ent. & Sports Law 21, 23 (stating that "[p]assing intestate can lead to unintended beneficiaries, limited ability to direct charitable goals, and substantial estate tax liability.").

50 people—and sometimes even by hundreds of people—given that property transfers by intestate succession often generate a far larger number of members in the ownership group than would be the case if family members had used wills or other estate planning tools to transfer their ownership interests.[31] Further, given the low-income/low-wealth status of many heirs' property owners, many of these owners have been willing to sell their interests to non-family members, often at prices well below the market value of their fractional interests though many of these sellers were unaware of that fact.[32] It has been documented that some of the owners who have sold their interests to buyers who then sought a partition by sale had no idea that selling their interests to these buyers could result in forced sales of the properties in question.[33]

Not only have many families ended up losing their heirs' property as a result of court-ordered partition sales, but a substantial percentage of these families have ended up losing a substantial amount of the real estate wealth associated with their heirs' property ownership.[34] Such results are not surprising given that a partition sale is a forced sale that is not designed as a practical matter to yield a fair market value price or even a price that roughly approximates a fair market value price. As Justice Scalia stated in a seminal 1994 bankruptcy decided by the United States Supreme Court, "market value, as it is commonly understood, has no applicability in the forced-sale context; indeed, it is the very antithesis of forced-sale value."[35]

To this end, in the clear majority of States, partition sales are conducted using the sales procedures for a type of forced sale referred to as a sale upon execution, most commonly used in cases in which debtors fail to pay their money judgments to their creditors. Sales upon execution are conducted using an auction in which the property that is the object of the sale is sold to the highest bidder who can pay his or her bid price in cash. However, these auctions are well known for normally yielding sales prices well below market value, and the sales often even yield fire sale prices.[36]

There are many reasons a partition sale predictably would yield a forced sale price that bears little relationship to a fair market value price. In many States, for example, a partition sale conducted using the sale upon execution procedures can take place within 10 to 15 days of a court ordering a sale, with only minimal notice to the public, and with no opportunity for potential purchasers to inspect the property. At most of the auctions that are conducted to sell tenancy-in-common properties ordered sold, a winning bidder must pay in cash immediately at the conclusion of the auction.[37] This requirement is quite different from how prospective purchasers in willing seller-willing buyer transactions can make offers to purchase property as most offers in an arms-length transaction are made contingent upon the prospective buyer later securing financing within a certain period of time.

Further, lenders normally do not allow those who own heirs' property to use those fractional interests as collateral to secure a loan, including prior to any partition sale. As a result, many low-income/low-wealth heirs' property owners who want to retain their property cannot participate in any effective way in the bidding given that they are land rich but cash poor. As a result, heirs' property sold at a partition sale often yields a sales price that represents just a small fraction of its market value as a winning bidder often is able to make a low-ball bid given that many of those who want to retain ownership of the property simply do not have financial resources to outbid even a low-ball bidder. Notwithstanding the predictable negative economic outcome of a sale conducted using the sale upon execution sales procedures, just one State uniformly requires partition sales to yield fair market value prices, and the fact that a partition sale yields a below-market or even

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[31] Cf. Kristina L. McCulley, Comment, *The American Indian Probate Reform Act of 2004: The Death of Fractionation or Individual Native American Property Interests and Tribal Customs?*, 30 Am. Indian L. Rev. 401, 407–408 (2006).

[32] *See* Todd Lewan and Dolores Barclay, *Quirk in Law Strips Blacks of Land*, Tennessean, Dec. 11, 2001, at 8A; also available at https://theauthenticvoice.org/mainstories/tornfromtheland/torn_part5/ [Date last accessed: May 3, 2019].

[33] *Id.* (noting that some of the real estate speculators in their case studies had purchased shares from elderly or mentally disabled heirs for prices that were well below the fair market value of those undivided interests and then had requested a court to order a partition sale). More broadly, one study of heirs' property owners revealed that 75 percent of those surveyed believed that heirs' property only could be sold with the unanimous consent of all of the tenants in common. *See The Impact of Heir Property*, supra note 21 at 123. Therefore, the vast majority of heirs in this study would not know that selling their individual, fractional interests could result in a forced partition sale.

[34] *See* Mitchell, Malpezzi, and Green, *supra* note 29 at 610–619.

[35] BFP v. Resolution Trust Corp., 511 U.S. 531, 537 (1994).

[36] *See* Mitchell, Malpezzi, and Green, *supra* note 29 at 603–605.

[37] *See* 30 Am. Jur. 2d Executions, Etc. § 341 (2018) ("As a general rule, the payment of a bid made at an execution sale must be in cash, that is, in United States currency.") (footnotes omitted). In fact, at most auctions used to sell a wide range of personal and real property throughout the world, the high bidder must pay in cash. *See, e.g.*, Matthew Rhodes-Kropf and S. Viswanathan, 36 RAND J. Econ. 789, 789 (2005) (stating that "the majority of auctions worldwide require cash bids").

a fire sale price is almost never considered grounds for overturning a partition sale.[38]

In many instances, partition sales have resulted in devastating property loss, including some instances in which partition action abuses fundamentally reshaped land ownership in certain States. In New Mexico, some who have studied land ownership among Hispanics in the State have estimated that 1 million acres or more of land that Hispanics owned at the conclusion of the Mexican-American War were forcibly sold in often dubious partition actions for prices that represented a small fraction of the value of the properties.[39] In South Carolina, up until 1950 or so, a substantial part of Hilton Head Island was owned by many African-American families before many real estate speculators began using partition actions as a tool to force the sale of a very large number of parcels of Black-owned properties, thereby decimating Black land ownership on the island.[40]

This history was well known among many in the impacted communities and among a discrete number of people outside of these communities. However, outside of these communities, partition action abuses for the most part flew under the radar screen for decades. As a result, partition action abuses were rendered a legal and even civil rights issue that few people in the media, in most law and policy circles, in many advocacy organizations that have not focused upon heirs' property issues, and in the general population were aware of according to some very knowledgeable attorneys.[41]

THE UNIFORM PARTITION OF HEIRS PROPERTY ACT: UNEXPECTED REFORM

Media Coverage of Partition Abuses Catalyzed Renewed Efforts to Reform Partition Law After Decades of Failed Reform Attempts

In the 4 decades leading up to the promulgation of the Uniform Partition of Heirs Property Act (UPHPA) in 2010,[42] some legal scholars and advocates published articles addressing partition action abuses, and some of these authors proposed various partition law reforms. The Emergency Land Fund (ELF), which was organized by Robert Browne in 1971, and later the Federation of Southern Cooperatives/Land Assistance Fund (which represented a 1985 merger of the Federation of Southern Cooperatives and the ELF) were the two most prominent organizations that first sought to address problems African-American landowners faced in a comprehensive way, including problems heirs' property owners faced.[43] Further, various other nonprofit organizations located in the South—but nowhere else—advocated for significant partition law reform to benefit heirs' property owners in certain southern States. However, prior to 2011, there simply was insufficient political support in any State for comprehensive reform of State partition law to benefit heirs' property owners.

In lieu of comprehensive partition law reform, a small number of southern States did enact into law some discrete partition reforms in the decades preceding the promulgation of the UPHPA.[44] One of the most prominent of these discrete partition law reforms was the passage of a bill in Alabama in 1979 that became law in part as a result of the advocacy work of the ELF, a groundbreaking organization that began working in the early 1970s to help African Americans retain their land.[45] The act provided tenants in common who were litigants in a partition action and who wanted to maintain ownership of their property with the right to buy out the interests of a fellow tenant in common that had petitioned a State court for a partition sale. At the time, the enactment of this particular reform was considered quite surprising and significant given that Alabama had done little to assist African-American heirs' property owners up to that point. Unfortunately, the act was short-lived given that, in 1985, the Alabama Supreme Court determined in a very poorly decided opinion that the buyout provision was unconstitutional.[46]

This widespread lack of political support led most attorneys and law professors who were familiar with partition law to conclude that partition law would never be reformed in any comprehensive way to benefit heirs'

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[38] *See* Mitchell, *Reforming Property Law, supra* note 11 at 21–23. To this end, Texas appears to be the only State that requires property sold at a partition sale to yield a fair market value price irrespective of what procedure is used to sell the property. *Id.* at 22. Based upon conversations I have had with some attorneys in Texas, it appears that the requirement in Texas that partition sales must yield a fair market value price has not been enforced in many cases.

[39] *Id.* at 34–36.

[40] Andrew W. Kahrl, The Land was Ours: African American Beaches from Jim Crow to the Sunbelt South 250–251 (2012).

[41] Anna Stolley Persky, *In the Cross-Heirs*, A.B.A. J. (May 2, 2009), http://www.abajournal.com/magazine/article/in_the_cross-heirs/ [Date last accessed: May 9, 2019].

[42] *See* Unif. Partition of Heirs Prop. Act (Unif. Law Comm'n 2010) [hereinafter UPHPA], available at https://my.uniformlaws.org/committees/community-home/librarydocuments?communitykey=50724584-e808-4255-bc5d-8ea4e588371d&tab=librarydocuments [Date last accessed: May 3, 2019].

[43] John G. Casagrande, Jr., Note, *Acquiring Property Through Forced Partitioning Sales: Abuses and Remedies*, 27 B.C. L. Rev. 755, 755 n.2 (1986).

[44] *See* Mitchell, *Reforming Property Law, supra* note 11 at 37–38.

[45] Joe Brooks, *The Emergency Land Fund: Robert S. Browne, The Idea and the Man*, 35 Rev. Black Polit. Econ. 67, 71 (2008).

[46] *See* Mitchell, *Reforming Property Law, supra* note 11 at 17–18.

property owners. Proponents of comprehensive partition reform faced a significant challenge because no influential State or national organizations—including ones with a long history of effective legislative advocacy work on other matters—played any role in championing or helping to build support for partition reform or any reforms for that matter that would benefit heirs' property owners.[47] This general lack of support in part was attributable to the fact that these organizations knew very little about the challenges heirs' property owners have faced in general and with partition law more specifically. It bears mentioning that the Federation of Southern Cooperatives/ Land Assistance Fund did attempt to convince a nationally prominent bar association to champion partition law reform 30 to 40 years ago, but this effort did not bear fruit.

In the wake of a class action lawsuit African-American farmers filed against the U.S. Department of Agriculture (USDA) in the late 1990s, two Associated Press (A.P.) reporters spent 6 months in the South and interviewed hundreds of people as part of their investigative reporting on Black land loss. Ultimately, they published an award-winning series in 2001, "Torn from the Land," which was syndicated nationally, and their three-part series featured a segment on partition action abuses. This segment featured several case studies of African-American families in various southern States who were dispossessed of their land by real estate speculators who used incredibly sharp and even unethical practices in partition actions.[48] The families who were impacted were paid very little for their properties given that the partition sales yielded fire sale prices in nearly every instance.[49] Publication of the A.P. article on partition action abuses turned out to be the unexpected catalyst in jump starting efforts to reform partition law in a meaningful way.

As a direct result of the A.P. series, the American Bar Association's (ABA) Section of Real Property, Trust and Estate Law (RPTE) formed a task force named the Property Preservation Task Force, spearheaded by a prominent Montana attorney named David Dietrich and consisting of a half dozen or so attorneys including me, to address partition law abuses. Our task force submitted a proposal in 2006 to the Uniform Law Commission (ULC), the organization that has worked for more than 127 years to develop model State statutes (statutes the ULC refers to as uniform acts) including the Uniform Commercial Code that the ULC developed in partnership with the American Law Institute. The proposal requested the ULC to form a drafting committee to draft a uniform partition act that would differ in significant ways from the general State partition laws. Because the ULC has had almost no history of developing uniform acts that implicate civil rights or social justice issues, many including me were a bit surprised that the ULC agreed to accept RPTE's proposal. After deciding to form a drafting committee, the ULC then appointed me to be the "Reporter" or principal drafter for the drafting committee. Our drafting committee[50] worked for 3 years to develop the act, which was ultimately named the Uniform Partition of Heirs Property Act (UPHPA).[51]

The UPHPA Represents the Most Far-Reaching Partition Reform in Modern Times

The UPHPA represents the most comprehensive reform of partition law since the 1800s when partition law was substantially reformed to allow the partition by sale remedy for the first time. Prior to these reforms that first occurred in some States in the early 1800s and which were then adopted in other States at different times throughout the century, judges overseeing partition actions were very constrained in how they could resolve a partition action. Normally, they only either could order the remedy of partition in kind or they could refuse to order any remedy, thereby maintaining the property ownership as it had been before the partition action was filed.[52]

Given that some have claimed that property law often evolves at the pace of geologic change, it is rather remarkable that in many States the UPHPA is changing a property law that almost had seemed impervious to change. To this end, the lack of any significant developments in partition law in most States over the course of 100 to 200 years or so led many to believe that archaic, State partition laws simply would persist in part based upon tradition. Those who have advocated for the UPHPA have been able to overcome this inertia by convincing lawmakers that the background partition law had become outdated in important ways and was

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[47] *Id.* at 38.

[48] *See* Lewan and Barclay, *supra* note 32.

[49] Thomas W. Mitchell, *New Legal Realism and Inequality, in* The New Legal Realism: Translating Law-and-Society for Today's Legal Practice 203, 215 (Elizabeth Mertz, Stewart Macaulay, and Thomas W. Mitchell eds., 2016) (in some of the cases, the heirs' property in question appeared to sell for <20 percent of its fair market value).

[50] *See* Mitchell, *Reforming Property Law, supra* note 11 at 3, n. 2 (identifying members of the drafting committee). In addition to the drafting committee, two advisors appointed by the ABA and several attorneys who participated as observers made important contributions to the development of the UPHPA. *Id.* at 3, n. 3 (identifying the ABA advisors as well as certain observers who played an important role in drafting the UPHPA).

[51] *See* UPHPA, *supra* note 42.

[52] See Mitchell, *Reforming Property Law, supra* note 11 at 6; Gillian K. Bearns, *Real Property – Giulietti v. Giulietti – Partition by Private Sale Absent Specific Statutory Authority*, 26 W. New Eng. L. Rev. 125, 142 (2004).

not working as it had been intended to work in some important respects, at least with respect to many heirs' property owners.

In developing the UPHPA, the drafting committee drew upon a subset of tools more wealthy families utilize in developing private agreements governing their common real property ownership, some aspects of partition law and other sources of law from some States, and some aspects of partition law from a limited number of other countries. Overall, the UPHPA establishes a hierarchy of remedies that are designed to help heirs' property owners preserve their property when possible or alternatively preserve as much of their real estate wealth as possible in those instances in which a partition by sale in fact would be the most equitable remedy. Though the UPHPA contains many enhanced legal protections for heirs' property owners, there are three major provisions of the act that make substantial changes to the extant partition law.

Buyout Provision

First, the UPHPA enables heirs' property owners who did not request a court to order partition by sale to buy out the interests of any of their fellow cotenants who did request partition by sale.[53] Those who may have their interests bought out under the UPHPA are treated quite fairly as the purchase price for their interests is established by multiplying the court-determined value of the property (normally the fair market value of the property as determined by an appraiser) by their percentage ownership of the property. For example, if a property is valued at $500,000 and the cotenant subject to being bought out owns a 5-percent interest, then the buyout price would be $25,000.[54]

The buyout could help heirs' property owners who want to maintain ownership of their property in two ways. First, though many heirs' property owners are land rich but cash poor as described previously, many do have some cash on hand or some liquid assets. In the example from above, the heirs that collectively own a 95-percent interest and who want to maintain ownership of the property may well be able to pool their resources to come up with the $25,000 that would be needed to buy out the tenant in common who petitioned for partition by sale. Admittedly, there may be many cases in which the only heirs who would be able to use the buyout provision in an effective way would be heirs who are at least solidly middle class[55] as opposed to low income or otherwise economically disadvantaged.[56] Nevertheless, in cases in which heirs who are economically more well off buy out a cotenant that petitioned a court for partition by sale, all of the heirs who had sought to maintain ownership of the property would benefit from the buy out, including those heirs who could not participate in the buy out because they lacked any financial resources to do so.

The buyout remedy also may have a prophylactic effect in that it may de-incentivize certain tenants in common—perhaps especially those that may own very small fractional interests—from filing a partition action and petitioning a court for partition by sale in the first instance to further their plans to acquire sole ownership of the property for a bargain price. As background, under the general partition laws, in several reported partition actions, a tenant in common that owned a very small interest—including some real estate investors and speculators that recently had acquired a family member's interest—successfully petitioned a court for partition by sale and then was able to acquire sole ownership of the property for a very low sales price. In addressing these type of cases, one property law professor has referred to the UPHPA's buyout provision as a mechanism that constitutes "shark repellant."[57]

Fortifying the Preference for Partition in Kind

Second, if the buyout remedy does not resolve the partition action, the UPHPA seeks to strengthen the property rights of heirs' property owners by adding real substance to the preference for a physical division of the property instead of what had become a de facto preference for partition by sale in many if not most States. The act explicitly precludes utilization of the "economics-only" test that judges in a majority of States developed. Under that test, courts would order heirs' property sold if the theoretical economic value of the entire property were to be determined by the court to be significantly greater than the aggregate economic value of the parcels that would result from a division of the property. Using this test, judges give no weight, or at best, little consideration to non-economic values, including heritage value that may arise from longstanding ownership of a particular parcel of property by a family, the cultural

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[53] *See* UPHPA, *supra* note 42, § 7 at 15–22.

[54] The buyout price under the UPHPA actually represents a price that is greater than the sales price a cotenant that owns a fractional interest in tenancy-in-common property typically would be able to achieve if that cotenant sought to sell his or her interest on the market, assuming there was any market for the fractional interest, which there often is not. *See* Way, *supra* note 16 at 157. Assuming a market, fractional interests in tenancy-in-common properties typically are subject to something called the minority discount and also are typically subject to a discount that takes account of the inherent instability of tenancy-in-common property, including the possibility that the property might be forcibly sold for a price well below market value. *Id.* at § 7 cmt. 5.

[55] *See* Rivers, *supra* note 25 at 8.

[56] *Id.* at 78.

[57] *See* Mitchell, *Reforming Property Law, supra* note 11 at 59.

or historical value of the property, or the harsh impact a sale might have upon an impoverished heir who was using the property for basic shelter.[58]

Instead, under the UPHPA, courts must use a "totality of the circumstances" test, which requires them to make findings on a range of economic and non-economic factors.[59] These factors include consideration of (1) whether as a practical matter the property can be divided; (2) whether if the property were to be sold it would yield a sales price that would be significantly greater than the aggregate market value of the parcels that would result from a division in kind, specifically taking into account the conditions under which the property would be sold; (3) longstanding ownership of any individual cotenant and one or more of their predecessors who are or were related to the cotenant or to each other; (4) a cotenant's sentimental attachment to the property that arises because the property has ancestral, cultural, or some other unique value; (5) a cotenant's lawful use of the property, including for commercial and residential purposes, and the extent to which the cotenant would be harmed if he or she could not continue to use the property for that lawful use if the property were forcibly sold; (6) the extent to which the various cotenants have fulfilled their obligations to pay their percentage of the costs of maintaining the property, such as contributing to paying the property taxes and maintaining property insurance; and (7) any other relevant factor. Under the multi-factored test, unlike application of the economics-only test, a court cannot decide at the outset to give more weight to any factor whether the factor be economic or non-economic in nature.

New Sales Procedure Designed to Preserve Real Estate Wealth

Third, in recognizing that partition by sale sometimes will be the most equitable remedy in some partition actions,[60] the UPHPA seeks to ensure that any partition sale that may occur ends up yielding a sales price that maximizes the economic return for heirs' property owners, thereby preserving as much of the real estate wealth of these families that was associated with their heirs' property ownership. As I have highlighted in previous scholarship, many State courts throughout the country that have applied the economics-only test to determine whether to partition property in kind or by sale have made a fundamental economic mistake in assuming that a partition sale would end up maximizing wealth for many heirs' property owners.[61] In assessing the economic value of the entire property, many of these courts had considered evidence of the fair market value of the entire property without taking into consideration that State law in almost every instance requires the property to be sold under forced sale conditions. Though seemingly not obvious to some judges who have ordered partition sales, a substantial percentage of court-ordered partition sales predictably have ended up yielding sales prices that have been considerably below market value, and, in many instances, partition sales have yielded fire sale prices.[62] As a result, many partition sales have ended up both extinguishing property ownership for heirs' property owners and stripping families of significant real estate wealth instead of maximizing their wealth as some judges had assumed the sales would.

To address this concern, the UPHPA fundamentally restructures the sales procedure nearly every State has used in selling heirs' property. As indicated previously, under general State partition laws in nearly every State, partition sales must be conducted using procedures for a type of forced sale known as a sale upon execution. Sales upon execution are well known to yield sales prices well below market value because the goal of these sales is to get money to unpaid creditors as quickly as possible, not to sell the debtor's property for the highest price possible.[63]

In contrast, the UPHPA's restructured sales procedure is designed to preserve as much real estate wealth as possible for heirs' property owners by incorporating many of the features of sales that are conducted under conditions designed to yield fair market value prices. These features simply are not incorporated into the forced sales procedures used for partition sales under general State partition laws. In seeking to vindicate the wealth maximization goal many courts have relied upon in ordering partition sales in the first place, the drafting committee for the UPHPA substantially changed partition law by making an "open market sale" the preferred sales procedure under the UPHPA.

In doing background research in my role as the principal drafter of the UPHPA on possible alternative partition sales procedures, my initial inspiration for advocating for the open market sales procedure came from a 1972 partition law case in Scotland. In that case, the Scottish

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[58] *Id.* at 12–13.

[59] *See* UPHPA, *supra* note 42, § 9 at 25–27.

[60] For example, in a partition action in which the property in question is a small, single-family home in an urban neighborhood and in which there are 15 tenants in common, it would be unlikely that the property could be divided in any practical way if the court would have to choose between ordering partition in kind or partition by sale, assuming a buyout for whatever reason did not resolve the case.

[61] *See, e.g.*, Mitchell, Malpezzi, and Green, *supra* note 29 at 612–613.

[62] *Id.* at 610–619.

[63] *Id.* at 603–606.

high court changed the rule governing the specific partition sales procedure that had to be used in partition actions in Scotland—a procedure roughly similar to the sales upon execution procedure used in most States in the United States—due to a concern that the auction sales used exclusively for partition sales up to that point in Scotland often yielded very low sales prices. In seeking a better sales procedure, I felt compelled to do some international comparative research because initially I could not find examples of partition sales procedures set forth in any State statute in any State in the United States that were designed to produce sales prices that would approximate market value prices.[64]

The open market sales procedure is designed to mirror the traditional procedures real estate brokers use when they market properties in their normal inventories as opposed to any distressed properties in their inventories.[65] Under the UPHPA's open market sales procedures, the court appoints a real estate broker who must list the property for its court-determined value, which will be its fair market value as determined by an appraiser in the vast majority of cases. In addition, the court-appointed real estate broker must try to sell the property using commercially reasonable practices similar to the practices he or she uses in attempting to sell properties in his or her normal inventory. As compared to partition sales that are conducted under the sales upon execution procedures, under the open market sales procedures there is much enhanced notice to the public of a partition sale, the property subject to a partition sale is exposed to the market for a much longer period of time, prospective buyers can inspect the property, and offers can be made contingent upon the offeror's securing financing at some later time, among other features.

The UPHPA's revamped sales procedure almost assuredly will result in significantly higher partition sales prices than the partition sales prices yielded using the sale upon execution sales procedure and other similar forced sales procedures that have been used in most partition actions decided under general State partition laws. As a reference point, the open market sales procedure used in Scotland has yielded much higher sales prices than partition sales previously yielded under the old partition law according to the lawyers and law professors there with whom I have spoken. The positive feedback I have gotten from some lawyers located in States that have enacted the UPHPA into law only increases my confidence that the open market sales procedures will yield significantly higher sales prices than the forced sales procedures used for partition sales under general State partition laws.

The UPHPA's Truly Remarkable Record of State Enactments

Prior to the ULC's finalizing its work on drafting the UPHPA, there was near consensus among most lawyers and law professors who were familiar with partition law that any proposals to reform partition law in ways designed to benefit heirs' property owners stood little chance of becoming law. In part, the skepticism was based upon a general sense that the power of inertia and tradition simply were too strong. Even though some (though not all) of the skeptics acknowledged the fundamentally unjust results of many partition cases involving heirs' property owners, they also assumed that partition law reform could not succeed given the socioeconomic status of both those who benefited from and those who were harmed by the extant partition law. They assumed that powerful real estate developers and others easily would be able to thwart any reform efforts in large part because disadvantaged heirs' property owners were perceived to be people who lacked any significant economic and political capital.

This near-consensus viewpoint appeared to be validated by the decades-long record of frustrated attempts to reform partition law in significant ways in various southern States. Even though the ULC promulgated the UPHPA, the ABA approved it for consideration by the States, and a number of civil rights and other nonprofit organizations including the American College of Real Estate Lawyers strongly endorsed it, there were many who believed that the act would end up being among the many ULC uniform acts in the area of real property that would not be enacted into law even by one State. Even fewer people believed that the UPHPA would be well received by any southern State given the many previous failed attempts in the South to reform partition law in a comprehensive way.[66]

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[64] I subsequently discovered a few scattered examples of courts in a very small number of States that had required partition sales to be conducted using something akin to an open market sale, though these cases represented extreme outliers.

[65] *See* UPHPA, *supra* note 42, § 10 at 27–29.

[66] This skepticism was rooted in knowledge about the long history of lawmakers in the South neglecting to address the negative impacts partition law has had upon African-American property owners despite repeatedly being made aware of the problem. To this end, in 2007, one law professor claimed the following: "One hundred fifty years after emancipation, the law of partition continues to be used as a tool of subjugation against African Americans in their quest to exercise one of the fundamental rights of freedom—the opportunity for real property ownership." *See* Rivers, *supra* note 25 at 7. She further noted that, despite some small partition law reform successes in a small number of southern States, these reforms represented very small successes and that more comprehensive reforms were needed. In clearly referencing lawmakers in southern States and African-American heirs' property owners, she stated: "For too long, lawmakers have turned a deaf ear to the warnings about the deleterious consequences of the partition laws." *Id.* at 8. Further, in my role as the Reporter for the UPHPA, I heard many lawyers and law professors express deep skepticism that the UPHPA would gain any traction in States throughout the country and particularly in States in the South.

This skepticism was understandable for a few reasons. Overall, the ULC has had a poor record of being able to convince States to enact its uniform real property acts into law. As one law professor has stated, if the measure of success for particular categories of uniform acts is the number of jurisdictions that have enacted those acts into law, "a critic could pronounce the National Conference's efforts in the real estate area as a failure for the most part."[67] To this end, the median number of State enactments for the 38 uniform real property acts that the ULC has promulgated in its 127-year history is just one.[68]

Given the low median number of enactments, it is not surprising that several uniform real property acts have failed to be enacted into law in even one jurisdiction. Examples include the Uniform Home Foreclosure Procedures Act,[69] the Uniform Manufactured Housing Act,[70] and the Uniform Nonjudicial Foreclosure Act.[71] Other uniform real property acts such as the Uniform Assignment of Rents Act[72] and the Uniform Residential Mortgage Satisfaction Act[73] have been enacted into law in a half dozen jurisdictions at the most. With few exceptions, the most successful uniform real property acts have been enacted into law in no more than 10 to 20 jurisdictions.[74]

The UPHPA's record of enactment success also is surprising given that almost none of the real property acts that have failed or otherwise garnered little support have implicated civil rights and racial justice matters in substantial ways. There were many who believed that the UPHPA would stand almost no chance of being enacted into law in even one State or jurisdiction given that it is a uniform real property act that addresses an important property law problem that had been primarily viewed as negatively impacting African Americans. Though many believed that the racial justice aspect of the UPHPA was commendable in the abstract, they also believed that, as a pragmatic matter, this aspect of the act would render it politically unpalatable in State legislatures throughout the country thereby resulting in its total failure.

Despite this widespread pessimism, the UPHPA has had a remarkable record of success in the 8 years since it was made available to the States for legislative consideration. At this time, 13 States and one other jurisdiction have enacted the UPHPA into law,[75] with Illinois and Missouri becoming the most recent States to enact it into law in 2019. Even more notably, 5 of the 13 States that have enacted the act into law are located in the South, with Texas becoming the most recent southern State to enact it into law in the spring of 2017. The success of the UPHPA thus far in the South has come as a great surprise even to those individuals who were the most optimistic about the UPHPA's potential to be enacted into law upon its promulgation in 2010, including me. Just as surprising, the act has received unanimous or near unanimous support in each State legislature that has voted to approve it.

In South Carolina, the legislature even named the act after Clementa C. Pinckney, the former State senator and a senior pastor of the Emanuel A.M.E. Church in Charleston, SC, widely known as Mother Emmanuel. Senator Pinckney was murdered in June 2015 along with eight other people at Mother Emmanuel while conducting a Bible study and prayer session. The South Carolina legislature named the UPHPA in his honor—the only legislative act they have named in his honor—because he had been the biggest champion of reforms to benefit heirs' property owners during his time in the South Carolina legislature.

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[67] Jon W. Bruce, *The Role Uniform Real Property Acts Have Played in the Development of American Land Law: Some General Observations*, 27 Wake Forest L. Rev. 331, 333 (1992).

[68] Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings of the Annual Conference Meeting in its 126th Year, Table VI, Acts Drafted or Endorsed by the National Conference Arranged by Subjects, Showng Their History and Present Status, 878–881 (2017).

[69] *See* Unif. Home Foreclosure Procedures Act (Unif. Law Comm'n 2015), available at https://www.uniformlaws.org/committees/community-home?CommunityKey=7589b516-7055-4ef7-8631-c9f8c525e69f [Date last accessed: May 3, 2019].

[70] *See* Unif. Manufactured Housing Act (Unif. Law Comm'n 2012), available at https://www.uniformlaws.org/committees/community-home?CommunityKey=96fefc9f-115e-46f0-bf6b-af42368799e5 [Date last accessed: May 3, 2019].

[71] *See* Unif. Nonjudicial Foreclosure Act (Unif. Law Comm'n 2002), available at https://www.uniformlaws.org/committees/community-home?CommunityKey=d873f0fc-d9eb-41b3-a6d2-e006e07a1f2c [Date last accessed: May 3, 2019].

[72] *See* Unif. Assignment of Rents Act (Unif. Law Comm'n 2005), available at https://www.uniformlaws.org/committees/community-home?CommunityKey=87c82f3e-a630-4d14-b6df-55afb591d496 [Date last accessed: May 3, 2019] (the Uniform Assignment of Rents Act has been enacted into law in five jurisdictions at this time).

[73] *See Unif. Residential Mortgage Satisfaction (Unif. Law Comm'n* 2004), available at https://www.uniformlaws.org/committees/community-home?CommunityKey=c2e7cac3-f2fa-4f4b-8a80-293184799b7c [Date last accessed: May 3, 2019] (the Uniform Residential Mortgage Satisfaction Act has been enacted into law in five jurisdictions at this time).

[74] Bruce, *supra* note 67 at 334.

[75] *See* UPHPA, *supra* note 42, available at https://my.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d [Date last accessed: Jan. 15, 2019]. These States are as follows: Alabama, Arkansas, Connecticut, Georgia, Hawaii, Illinois, Iowa, Missouri, Montana, Nevada, New Mexico, South Carolina, and Texas.

There are a few factors that help explain the unexpected, even astonishing enactment success the UPHPA has had thus far. I believe five factors are particularly germane. These factors include some that most people who had proposed partition law reform to benefit heirs' property owners did not fully anticipate would be important before the ULC decided to form a committee to draft the UPHPA.

First, the UPHPA never would have been drafted in the first place without the support at the national level of the Joint Editorial Board for Uniform Real Property Acts (JEB-URPA) (a very important but not widely known organization that advises the ULC on potential uniform real property projects), the ULC, and the ABA. The ULC together with some prominent State organizations within certain States have greatly facilitated the legislative advocacy work many of us have done in some of the States where we have had success, including by opening critical doors for us that otherwise would have remained firmly shut. As indicated previously, prior to the promulgation of the UPHPA, many efforts to reform partition law in significant ways floundered in large part because those who were advocating for partition reform lacked any support from prominent national and State organizations.

Second, a coalition called the Heirs' Property Retention Coalition (HPRC),[76] which was formed in 2006 specifically to help advance the goal of partition law reform through the uniform law process, played an important role in the drafting of the UPHPA. The HPRC also has played an important role in helping to enact the UPHPA into law ever since the UPHPA was first made available to the States for consideration in 2011. The HPRC mostly consists of many nonprofit legal organizations of one type or another and other nonprofit organizations—including community-based organizations—with a deep commitment to preservation of heirs' property, particularly within low-income African-American communities. Though all of these organizations have been committed to preserving heirs' property ownership, including some that have worked on heirs' property issues for decades, many of the organizations had not collaborated in any meaningful way prior to the formation of the HPRC. Further, the then-President of the ULC informed me while we were drafting the act that it was incredibly rare if not unprecedented for such a coalition of local, State, and regional grassroots and nonprofit organizations to participate in such an active way in the drafting of a uniform act.

Third, the group of organizations and people who have worked to advocate for enactment of the UPHPA have worked together in a very organized, strategic, and sustained way matched by only a very small number of the other advocacy efforts that have been undertaken to enact other uniform real property acts into law. Those most involved in this work include but are not limited to Benjamin Orzeske who is the Chief Counsel of the ULC, John Pollock who is the coordinator for the HPRC, and me. In addition, various representatives from individual organizational members of the HPRC have played important roles in particular enactment efforts in the States in which these organizations are located. For example, in Arkansas, HPRC member Karama Neal formed a statewide grassroots organization named Heirs of Arkansas[77] specifically to build support for the UPHPA. The organization worked seamlessly with the ULC and other stakeholders to advocate for the UPHPA, advocacy work that resulted in the unanimous passage of the UPHPA in the Arkansas legislature in 2015. The overall coordinated work—effectively combining top-down and bottom-up approaches—has been ongoing over the course of the past 8 years, and it likely will continue in some form for years to come.

Fourth, the lion's share of scholarship on heirs' property ownership has focused on African-American heirs' property problems in the rural South in addition to nearly all of the media coverage on the issue.[78] This scholarship and media coverage appropriately have highlighted the racial injustice many heirs' property owners have experienced. Nevertheless, it turns out that, though African Americans and other racial and ethnic minorities disproportionately have had negative experiences with their heirs' property ownership, many disadvantaged and middle-class White families also have experienced serious challenges with their heirs' property ownership.[79]

In our legislative advocacy work to promote enactment of the UPHPA in various jurisdictions, it has been helpful that we have been able to point out quite explicitly in a very upfront way that partition law has negatively impacted many different types of heirs' property owners. These owners include African Americans, White Americans, Hispanics/Latinos, Native Americans, and Native Hawaiians, and the properties in question include many that are located in rural and urban areas, for example. The racial and ethnic diversity of the impacted owners helps explain why State legislatures and governors in states such as Iowa and Montana have enacted the UPHPA into

[76] *See* Heirs' Property Retention Coalition, *HPRC News*, https://www.southerncoalition.org/hprc/ [Date last accessed: June 1, 2019].

[77] *See* Heirs of Arkansas, https://heirsofarkansas.wordpress.com [Date last accessed: Apr. 19, 2019].

[78] *See* Mitchell, *Reforming Property Law*, *supra* note 11 at 31.

[79] *Id.* at 31–36.

law to help heirs' property owners in those States and why the acts have been well received in those States.[80] The diversity among heirs' property owners also helps explains why the UPHPA was enacted into law in Hawaii and New Mexico given how many native Hawaiians and Hispanics in the Southwest have been negatively impacted by partition actions.

Fifth, those of us who have advocated for enactment of the UPHPA also have been able to frame the reform effort as an effort to protect vital property rights and to help families preserve their real estate wealth. This alternative framing is one that we had not focused on as much when we first began work on drafting the UPHPA as we did not fully appreciate the resonance it would have with many State legislators. Without question, as a very pragmatic matter, emphasizing the UPHPA's features of protecting property rights/preserving family real estate wealth has been very helpful in advocating to get the UPHPA enacted into law in several States, including in several States in the South.[81]

Going forward, it would not be surprising if 20 to 25 jurisdictions enacted the UPHPA into law by 2025. Three recent developments have given an additional boost to the efforts to enact the UPHPA into law in additional States. Based upon the early enactment success of the UPHPA, the ULC has added the UPHPA to its list of target acts, a list of approximately 15 acts for which the ULC prioritizes in its overall efforts to enact the more than 130 uniform and model acts it is recommending for State enactment at the current time. Second, the JEB-URPA recently decided to augment the work it has done for more than 100 years in evaluating potential uniform real property acts for the ULC by getting involved in efforts to increase the number of enactments of already promulgated uniform real property acts. It has selected a small number of uniform real property acts to begin promoting, and the list includes the UPHPA. To this end, Professor Wilson Freyermuth, the JEB-URPA's Executive Director, played an instrumental role this year in successfully advocating for enactment of the UPHPA in Missouri. Third, as described below, the 2018 Federal Farm Bill includes specific provisions that provide incentives for States that have not enacted the UPHPA to do so.

FEDERAL FARM BILL: BUILDING UPON AND BOOSTING THE UPHPA

In December 2018, the Federal Farm Bill became law. The bill includes some first-ever and potentially game-changing heirs' property provisions that were key provisions of two identical bills named the Fair Access for Farmers and Ranchers Act of 2018, which were introduced in the summer of 2018 in the U.S. Senate and House of Representatives.[82] The provisions are designed to increase the ability of farmers and ranchers who own heirs' property to operate sustainable and successful farms and ranches. This incredibly significant Federal initiative could provide many farmers and ranchers who own heirs' property with access for the first time to a number of essential farm programs, including loan programs. It also could provide them with much needed legal resources to enable them to restructure the legal ownership of their property and to deal with neglected succession issues, which could benefit not only their farming and ranching operations but also could enable them to use their property ownership in much more expansive ways.

As background, farmers and ranchers who own heirs' property but lack clear title (including many minority farmers and ranchers) have been severely disadvantaged in terms of their ability to operate successful farming or ranching operations. To this end, they often have been unable to secure loans from commercial financial institutions because banks and other lending institutions never or almost never lend money to property owners who lack clear title to their property in those instances in which the real property would serve as collateral to secure the loan.[83] To make matters worse, because they lack clear

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[80] *See, e.g.*, Elizabeth Williams, *Family Farm: Law Equalizes Property Sale in Iowa, 10 Other States – DTN*, AgFax (Sept. 5, 2018), https://agfax.com/2018/09/05/family-farm-law-equalizes-property-sale-in-iowa-10-other-states-dtn [Date last accessed: May 3, 2019]; *see also* Elizabeth Williams, *Option for Heirs: New Iowa Law Makes Option for Keeping Farm Together Easier*, DTN (Sept. 4, 2018), https://www.dtnpf.com/agriculture/web/ag/news/business-inputs/article/2018/09/04/new-iowa-law-makes-keeping-farm [Date last accessed: May 3, 2019]. The Iowa enactment was sparked by a 2016 Iowa Supreme Court decision in which the Iowa Supreme Court overturned an Iowa intermediate appellate court decision granting partition in kind in a case in which a brother and sister sought different remedies with respect to a family farm totaling nearly 500 acres. As a result, the brother's request for partition by sale was granted. *See* Newhall v. Roll, 888 N.W.2d 636 (Iowa 2016). The case almost certainly would have resulted in a different outcome under the UPHPA, with either the sister buying out the brother's fractional interest or the court ordering partition in kind.

[81] Obviously, many vital racial justice issues are not nearly as amenable to being framed in such an alternative way, which can make addressing them more challenging.

[82] *See* S. 3117, 115th Cong. (2018).; H.R. 6336, 115th Cong. (2018). S. 3117 was sponsored by Senator Doug Jones (D-AL) and cosponsored by Senator Tim Scott (R-SC). H.R. 6336 was introduced by Representative Marcia Fudge (D-OH) and cosponsored by Representative Sanford Bishop (D-GA) and Representative Alma Adams (D-NC).

[83] *See* Edwin McDowell, *The Victorious Home Buyer's Final Lap*, N.Y. TIMES, Mar. 18, 2001 ("unless there is clear title to the property . . . 'no bank will ever lend any amount of money.'" *Cf.* Letter from Christy Kane, Exec. Director, Louisiana Appleseed, to The Advocate (Aug. 10, 2015) (stating that "without clear title, owners cannot exercise important property rights such as receiving government aid, selling the property, refinancing, getting a loan to repair the property and cashing insurance checks.").

title, they also have been unable to participate in a very large number and wide variety of programs that the USDA administers, including loan programs, commodity support programs, and disaster assistance compensation programs.

To appreciate the implications for farmers and ranchers who own heirs' property and lack access to credit, one must know something about the crucial role that credit plays in agriculture, which one author has summarized as follows:

> *In ways that may not be obvious to those unfamiliar with agriculture, credit is the lifeblood of farming and ranching. Successful farms and ranches must have access to timely credit, in adequate amounts, at fair terms. Most crucially, virtually every producer uses short-term operating credit to purchase production inputs. Seed and fertilizer, for example, are often bought in the spring on credit, and the debt is repaid after harvest in the fall. Credit is also used to purchase machinery, equipment, livestock, and livestock feed. Without credit, real estate purchases are not possible. In summary, without ongoing access to credit, farmers and ranchers simply cannot operate.*[84]

One major, but quite obscure, obstacle farmers and ranchers who own heirs' property have faced has been that farm and ranch operators must obtain a farm number[85] from the USDA to participate in most USDA programs. Further, to obtain a farm number, a farm or ranch operator has to demonstrate control of the land in question. However, the USDA, up until passage of the Farm Bill, would not grant farm numbers to heirs' property owners who lacked clear title to their property because the USDA made proof of clear title a prerequisite to obtaining a farm number for those claiming to be the owners of farmland or ranchland even if the operator could demonstrate control of the land in some other ways.[86]

The inability of many heirs' property owners to participate in crucial USDA programs has harmed these owners in substantial ways. For example, disadvantaged farmers and ranchers who have owned heirs' property and who have not been able to obtain loans from commercial lenders or from the USDA often have had no other viable options for securing a farm loan because the USDA is widely known within the agricultural community as a lender of last resort.[87] As a result, these farmers and ranchers often have been unable to operate successful farming or ranching operations. Though a relatively small number of farmers and ranchers can self-finance their operations, hardly any disadvantaged farmers or ranchers, including most farmers and ranchers who own heirs' property, can operate farms or ranches without access to credit. In terms of disaster relief, the Emergency Conservation Program (ECP), for example, provides very helpful monetary relief to farmers who experience harm to their farmland and certain structures on their farms as a result of many different types of natural disasters.[88] However, to be eligible for ECP monetary assistance, a farmer is required have a farm number.

One important provision of the new Farm Bill enables heirs' property owners who lack clear title to receive USDA farm numbers provided they can provide USDA officials with at least one of a small number of approved types of documentation that are specified in the bill. The Farm Bill provides farmers and ranchers who own heirs' property and who are located in States that have enacted the UPHPA into law with more options for the types of eligible documentation they can provide to USDA officials to obtain a farm number than are provided to other farmers and ranchers who own heirs' property. These farmers and ranchers who claim to own heirs' property and who live in States that have enacted the UPHPA into law can either (a) submit a court order that verifies that the land qualifies as heirs' property as defined under the UPHPA or (b) they can produce certification from the local recorder of deeds that the record owner is deceased and that at least one "heir of the record owner has initiated a procedure to retitle the land in the name of the rightful heir."[89] In addition to these forms of documentation, the Farm Bill establishes three other specific forms of documentation an heirs' property owner who operates a farm or ranch in any

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[84] Stephen Carpenter, *The USDA Discrimination Cases: Pigford, In re Black Farmers, Keepseagle, Garcia, and Love*, 17 Drake J. of Agric. L. 1, 11 (2012) (footnotes omitted) [hereinafter Carpenter, *USDA Discrimination Cases*]. *See also*, Stephen Carpenter, *Family Farm Advocacy and Rebellious Lawyering*, 24 Clinical L. Rev. 79, 95 n. 54 (2017). *See also*, Bryon J. Parman and Max W. Runge, *Southern Agricultural Lending and Farm Credit Conditions, in* Southern Extension Committee, United States Dep't of Agric., Surviving the Farm Economy Downturn 18, 18 (2017) ("With the majority of US farmers and ranchers needing loans for operation or expansion, borrowing costs and fund availability are an important component of US production agriculture.").

[85] A farm number is defined as "a number assigned to a farm by the county committee for the purpose of identification." *See* 7 C.F.R. § 718.2.

[86] Leah Douglas, Psst! *The Farm Bill Includes a Rare Provision That Could Help Black Farmers*, The Nation (July 24, 2018), https://www.thenation.com/article/psst-farm-bill-includes-rare-provision-help-black-farmers/ [Date last accessed: May 3, 2019]. *See also* Rural Coalition, *Call In + Voice Out: Fair Access* (June 26, 2018), https://www.ruralco.org/actions/2018/6/26/call-in-voice-out-fair-access [Date last accessed: May 3, 2019].

[87] Carpenter, *USDA Discrimination Cases, supra* note 84 at 11.

[88] *See* U.S. Dep't of Agric., FSA Handbook: Emergency Conservation Program, 1-ECP (Rev. 5), https://www.fsa.usda.gov/Internet/FSA_File/1-ecp_r05_a01.pdf [Date last accessed: May 3, 2019].

[89] H.R. Rep. No. 115-1072 at 537 (2018) [hereinafter *Conf. Rep.*].

State (including States that have enacted the UPHPA into law and those that have not) can utilize in order to obtain a farm number.[90]

The provision of the Farm Bill making it far easier for heirs' property owners to obtain a farm number represents a very substantial breakthrough for many farmers and ranchers who are heirs' property owners, owners who often have been unable to secure financing to operate successful farms and ranches and to participate in other vitally important USDA programs. The provision could help stabilize land ownership for these disadvantaged and at risk-farmers and ranchers by enabling them to have a more reliable stream of income to pay their property taxes and other obligations that must be paid simply to maintain ownership of their property. It also could help them withstand economic shocks such as those that occur as a result of natural disasters, which is important because farmers and ranchers often experience various types of economic shocks pertaining to matters that often are not in their control. In addition to helping these farmers and ranchers simply survive economically, substantially reducing the barriers these particular heirs' property owners have faced in obtaining a farm number could help many of them to begin to use their farms and ranches to build significant wealth for the first time just as many other farmers and ranchers long have been able to do.

Second, the Farm Bill contains a provision enabling the USDA to make or guarantee loans to certain eligible cooperatives, credit unions, and nonprofit organizations so that these entities could then relend these funds to individuals or entities provided that the loan funds would be used to fund projects designed to help heirs' property owners "resolve ownership and succession on farmland that has multiple owners."[91] Resolving ownership means either clearing title or consolidating ownership in a way that results in a more manageable number of people owning the property. Addressing succession could include probating a will that has not been probated or developing an estate plan in the first instance. The relending program is important because heirs' property owners often experience many legal and non-legal problems with their ownership because many lack clear title and because most do not have an estate plan, which can perpetuate problems with unclear title and unstable ownership, and also can make heirs' property ownership otherwise unmanageable.

For example, heirs' property owners who lack clear title have not only been ineligible to participate in most USDA programs as discussed hereinbefore, but they also have been rendered ineligible to participate in a wide variety of other Federal and State governmental programs including lending programs, housing programs, and disaster relief programs. As already indicated, they also have been ineligible for many commercial loans from private lenders.[92] A substantial percentage of these owners also do not have wills or other estate plans, which results in perpetuating their often-dysfunctional tenancy-in-common ownership in an intergenerational way.

The relending program is structured in a way to provide much needed assistance, including legal assistance, to farmers and ranchers who own heirs' property. The relending program is very attractive from the perspective of eligible borrowers because the loans it could make possible would be low-interest loans that also have other very advantageous terms. In seeking to address the low incidence of estate planning among disadvantaged farmers and ranchers who own heirs' property, the relending program wisely requires farmers and ranchers who borrow funds under the program to complete an estate plan as a condition of the loan.[93] Though the Farm Bill makes the relending program possible, it must be stated that, given that it is a new program, Congress would have to appropriate funds for the program to make it fully operational.

The Farm Bill's provision making it easier for heirs' property owners to obtain a farm number together with the bill's relending program also incentivize more States to consider enacting the UPHPA into law. In terms of

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[90] *Id.* It bears mentioning that the Farm Bill requires the Secretary of Agriculture to identify other possible alternative forms of eligible documentation that would enable heirs' property owners to obtain a farm number.

[91] *Id.* at 185. Sophisticated property owners recognize that they have a variety of options in terms of how to structure or restructure their property ownership (including how the property will be transferred to family members at some point), and they often hire financial or legal professionals to help them accomplish their economic and non-economic goals that implicate their property ownership. These owners often are advised about the perils of tenancy-in-common ownership under the default rules and as a result almost never choose to organize their ownership using the default rules of tenancy-in-common ownership, though some do enter into privately negotiated tenancy-in-common agreements (TIC agreements) that contract around the worst of the standard default features of tenancy-in-common ownership. *See* Mitchell, Malpezzi, and Green, supra note 29 at 616–617. In contrast, just as heirs' property often is created in the first instance due to a lack of proper estate planning, many heirs' property owners have been unaware that they have legal options they could pursue to improve the quality of their property ownership, which results in these families failing to consult with transactional attorneys with expertise in business law, estate planning, and real estate or with other business professionals to their detriment. Sadly, many other heirs' property owners simply lack meaningful access to attorneys who could help them structure their ownership to accomplish the property-related goals they may have.

[92] *See* Way, *supra* note 16 at 156–157.

[93] *See Conf. Rep.*, *supra* note 89 at 185.

the farm number provision, as discussed hereinbefore, farmers and ranchers who own heirs' property and who live in States that have enacted the UPHPA into law have expanded options for types of documentation they can submit to USDA officials to obtain a farm number as compared to other farmers and ranchers. The relending program also incentivizes States that have not enacted the UPHPA into law to consider doing so. To this end, under the relending program, the only eligible entities that are eligible to receive an initial loan from the USDA are cooperatives, credit unions, and nonprofit organizations. Among these eligible entities, however, the relending programs grants an explicit preference to cooperatives, credit unions, and nonprofit organizations that (1) have at least 10 years of experience working with socially disadvantaged farmers and ranchers and (2) are entities that are located in States that have enacted the UPHPA into law.[94]

Those who were primarily responsible for drafting the heirs' property provisions of the Farm Bill, including those in Congress and the Rural Coalition, were wise to incentivize additional States to enact the UPHPA into law because heirs' property owners both need substantial additional assistance from the Federal government and also need to have enhanced State-level property rights to help them stabilize their legally insecure ownership. The Farm Bill's heirs' property provisions would be undercut if farmers and ranchers who own highly insecure heirs' property end up losing their farm and ranch properties as a result of court-ordered partition sales or because they are pressured to sell their properties due to a cotenant's threat of initiating an expensive partition action that could result in a partition sale at a fire sale price. Given that the UPHPA does more than any law ever has done to help heirs' property owners stabilize their ownership, it made sense for the architects of the Farm Bill's heirs' property provisions to seek to expand the number of States that adopt the UPHPA to help further the goals of the heirs' property provisions of the Farm Bill.

The Farm Bill's heirs' property provisions already have been successful in terms of convincing some additional State legislators to introduce UPHPA bills in their State legislatures. Thus far in 2019, there have been 11 introductions of the UPHPA in various legislatures, a record number for the UPHPA. The Farm Bill played an important role in encouraging legislators to introduce the UPHPA in at least three States—Illinois, Indiana, and Nebraska—and it proved helpful when Missouri legislators considered the UPHPA bills. It would not be surprising if the Farm Bill played a role in generating additional introductions of UPHPA bills in other States going forward or helped build support for bills that primarily were introduced to address other serious concerns about partition law in some jurisdictions as was the case in Missouri this year.

Admittedly, setting aside the incentives the Farm Bill provides to States that have not enacted the UPHPA to do so, the particular scope of the bill's efforts to assist farmers and ranchers who are heirs' property owners is limited to the work and programs of the USDA. Nevertheless, the Farm Bill's momentous heirs' property provisions could be built upon in a substantial way. This could happen if other Federal and State governmental entities, including various governmental departments, agencies, and services, took a cue from the Farm Bill by changing some of their rules and policies that have harmed heirs' property owners and could establish new programs to make heirs' property ownership much more viable.

There are early indications that the Farm Bill has been successful in raising broader awareness of some of the critical problems that have hindered heirs' property owners for decades, including among legislators who serve in Congress and in various State legislatures, as well as some who work for prominent foundations and media organizations. Quite remarkably, one of the most prominent 2020 Presidential candidates recently disseminated policy proposals to assist heirs' property owners, which might be the first time any Presidential candidate in U.S. history ever has developed any heirs' property proposals. Her proposals specifically reference the Farm Bill's heirs' property provisions (and reference the UPHPA at the State level as well), support their full implementation, and seek to build upon them by requiring the Federal Emergency Management Agency and the U.S. Department of Housing and Urban Development to provide similarly enhanced programmatic assistance to heirs' property owners.[95] Hopefully, this very positive development at the Federal level together with the unexpected success of the UPHPA at the State level can be leveraged to generate more policy development and implementation as well as legal reform to benefit heirs' property owners in the years to come.

CONCLUSION

A huge number of heirs' property owners, including a substantial and very disproportionate number of African-American heirs' property owners, have encountered problems with their heirs' property ownership, including many who have lost their property in partition actions that have yielded fire sales prices. For those families who

[94] *Id.*

[95] Lizzie Presser, *Elizabeth Warren Announces Plan to Help Heirs' Property Owners*, ProPublica (Aug. 20, 2019), https://www.propublica.org/article/elizabeth-warren-announces-plans-to-help-heirs-property-owners [Date last accessed: Aug. 22, 2019].

already have lost their property in some type of involuntary way, there is not much that can be done to remedy the history unless State or Federal policymakers take some extraordinary actions to recognize and address the damage that has been done. Even so, there remains a very substantial number of heirs' property owners throughout the United States, in both rural and urban America.

Despite the sad history of the many heirs' property owners who lost their property involuntarily, in what constitutes dramatic change, recent legal reform and policy development are disproving the previous, widely accepted notion that heirs' property owners had little reason for hope. After most States had shown utter indifference to the plight of heirs' property owners over the course of many decades despite repeated calls for assistance, there has been a surge of States that have taken legislative action to assist heirs' property owners. Defying decades of deep skepticism about the very ability of partition law to be reformed in a substantial way, since 2011, 13 States and the U.S. Virgin Islands have enacted the UPHPA into law in an effort to address some of the thorny legal challenges heirs' property owners have endured for generations that have undermined their ownership in substantial ways. Further, there is a good chance that several more States will enact the UPHPA into law over the course of the next several years, as might other jurisdictions such as the District of Columbia.

Even more remarkably, several of the States that have enacted the UPHPA into law are located in the South, and most of these are States that are part of the so-called Deep South. The enactments in the southern States are quite significant for two reasons. First, it is generally accepted that heirs' property problems in the South are particularly widespread, which has led some to claim that the heart of heirs' property problems lies in the South. Second, it was widely (though incorrectly) assumed that the southern States would be particularly resistant to enacting the UPHPA into law. This assumption was premised upon the belief that southern State legislators would view the UPHPA as a uniform act that primarily would benefit African Americans in their States, and, therefore, would be an act they would have little interest in supporting.

Interest among policymakers in addressing some challenges heirs' property owners experience has not been limited to States or other jurisdictions that either have enacted the UPHPA into law or are considering it at this time. The very unexpected success the UPHPA has experienced at the State level, in part, has helped certain members of Congress become more aware of heirs' property issues and more committed to addressing them, which represents quite a significant and positive development for heirs' property owners. In addition to these legislative actions, over the course of the past few years, a few very prominent Federal entities or agencies including the USDA Forest Service Southern Research Station and Natural Resources Conservation Service and the Federal Reserve Bank of Atlanta have demonstrated real interest in helping heirs' property owners realize more of the potential of their property ownership.

Many heirs' property owners want to transition from merely focusing upon their basic survival as property owners to spending more time on using their properties in more productive ways, including in ways that would enable them to build wealth. Though the UPHPA can play a vital role in helping protect heirs' property owners from some of the very devastating impacts of court-ordered partition sales, the act is not a silver bullet. It was not designed to solve the full range of heirs' property problems, including the widespread problems that flow from heirs' property owners lacking clear title or the problems many other heirs' property owners experience with gridlocked common ownership, which frustrates the ability of the common owners as a whole to use their property in useful and productive ways.

To help these property owners make that transition, more legal reform and policy development and implementation work needs to be done. Hopefully, the new and unprecedented interest very important stakeholders have demonstrated in addressing heirs' property challenges impacting urban and rural property owners alike can be leveraged to make possible the additional legal reforms as well as policy development and implementation that are needed. Given that the success of the UPHPA completely has disproven the notion that policymakers would never act to address the concerns of heirs' property owners, at least now there is real hope that more can be done to make heirs' property ownership a more viable, beneficial, and productive form of ownership for all types of families for generations to come.

Options for Countering the Faustian Bargain in the Judicial Partition of Heirs' Property and the Enduring Phenomena of Investor-Speculator "Fishing"

Phyliss Craig-Taylor

> *Ah, those who plan iniquity and design evil on their beds. When morning dawns, they do it, for they have the power. They covet the fields, and seize them; houses, and they take them away. They defraud men of their homes and people of their lands.* (The Israel Bible, Micah 2: 1–2)

How many different ways can the inferiority of a group be cemented into the tapestry of society? Denying, impeding, and destroying people's abilities to build productive wealth are effective suppression tools. Whether through denial of the impact of wealth stripping or other intentional acts, the failure to adequately address the legal and cultural challenges of inheritance through heirs' property gives rise to a number of negative consequences. I propose the initiation of a novel concept to capture an equitable portion of the profits gained from the future sale of a former heirs' property after the ownership has been ruptured by investor-speculators.

Heirs' property scholars charge that African-American and other lower wealth families have been divested of large amounts of land in the South via taking schemes (Craig-Taylor 2000, Deaton 2005, Mitchell 2001, Rivers and Stephens 2009). These typically proceeded with an investor-speculator identifying a cotenant to approach and tendering an offer to purchase his or her interest in the cotenancy. Property law provides judicial partition as a remedy to prevent cotenants from being trapped in an ownership model that is no longer desirable for any number of reasons, creating a back door for the quasi-taking of property.[1]

Most judicial partition statutes operate in a manner similar to governmental takings by inverse condemnation but without providing assurance that just compensation will be paid. Although the law has created a presumption for division of property over the sale of the property, the rule has offered little relief because the decline in economic value of the entire tract when divided is often cited as the rationale for a partition by sale. At the sale, the highest bidder is vested with the title to the entire tract over the objection of the cotenant heirs who must accept the price generated by a judicial sale. While the partition by sale option allows any single co-owner to exit what he or she may deem an unworkable ownership structure, it inadvertently creates opportunities for an investor-speculator to divest ownership by purchasing just one cotenant's undivided share and then filing a petition to force the sale of the whole, thus threatening or perhaps rupturing the familial legacy. With the evolution of real estate software and programs that allow faster property searches, combined with the technology and growth of genealogical search tools, investor-speculators are now flush with resources to "fish" for heirs' property. They can search massive amounts of data to identify heirs' property and associated cotenants of specific properties with significantly greater success, increasing the numbers of partition sales in areas undergoing gentrification and

[1] Governmental regulation of private property in zoning regulations and in eminent domain are grounded in well-established case law. See, Village of Euclid v Amber, 272 U.S. 365 (1926). When private property is divested, a recognized strand of property ownership is removed—the right to control alienation. The just compensation clause of the Fifth Amendment states, "[N]or shall private property be taken for public use, without just compensation." U.S. CONST. amend V. Partition sales, also, operate to transfer title without the consent of the owner removing the right to control alienation.

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development as well as in communities undergoing post-disaster recovery efforts (Chemtob and Portillo 2019, Flocks et al. 2018). In States that have not adopted the Uniform Partition of Heirs Property Act, disparate wealth between other cotenants and the petitioning cotenant allows the new cotenant to outbid other interested parties and walk away with title to the entire tract at far less than market value. The fact that one cotenant can force the sale of the entire tract without any acquiescence from other cotenants is still unbelievable to many, especially the cotenants facing the loss of their land.

The ability of an investor-speculator to make concrete offers to family members who are often separated by time, space, absentee relationships to the land, and skepticism regarding the legal process may appear an economic gain to the individual cotenant who is possibly unaware of the larger implications for the other co tenants. It is a Faustian bargain: while the individual may achieve a gain from the resulting sale of his or her interest, the sale will trigger a cascading set of events leading to dispossession of the other heirs' property interests. In addition to the individual's economic gain, a moral dilemma is raised by the sale of the interest to an outsider causing a possible rift in the family.

Although the issue of heirs' property is described most often as a rural phenomenon, its effects manifest in urban areas as well. For instance, changes in the geographical distribution of new economic activity (e.g., agglomeration effects and the changing desire for housing and amenities by workforces attracted to these locations) have placed tremendous pressure on land prices and housing costs in some of the largest U.S. cities and metropolitan areas like Portland, OR, Denver, CO, and Atlanta, GA (Maciag 2015). Smaller cities and towns have also experienced these dynamics to a lesser extent. For example, areas of Durham, NC, have undergone extensive renovation in response to demand for in-town living by White, wealthier home buyers.[2] In these scenarios, older inner-city neighborhoods that have historically experienced disinvestment over generations or disruption by urban renewal and highway projects near downtown areas have once again become economically valued and relevant land, with investor-speculators seeking ways to acquire land, lots, and homes whose values have increased dramatically because of their special geospatial proximity to the urban areas. The existence of heirs' property in these neighborhoods provides a number of avenues for investor-speculators to pursue the acquisition of these properties.[3] Additionally, increasing catastrophic weather events that have spawned disasters in both urban and rural communities across the country have resulted in the disruption and destruction of thousands of properties in poor working-class areas and have thrown open questions of ownership/title that have lain dormant for years, thus affecting the shape, redesign, and rebuilding of these recovery communities. The inability to show clear title by a cotenant creates significant impediments to acquiring resources to rebuild (Craig-Taylor 2011, Georgia Appleseed 2013).

The Uniform Partition of Heirs Property Act (UPHPA) was a significant legislation proposal to provide a framework to protect generational wealth of cotenants holding heirs' property (see Thomas Mitchell's essay in these proceedings). Key provisions of the UPHPA enhanced service of process requirements in partition actions by mandating a posting of a conspicuous sign on the property subject to the action. Second, appointed commissioners must be impartial, and the court must ascertain the fair market value of the property by ordering an appraisal, unless all cotenants agree on a different method of valuation. A determination of market value protects the cotenants in a partition sale from a forced sale for far less than market value via a judicial sale on the courthouse steps. Most importantly, cotenants are provided buyout rights in the UPHPA. Although this option is viable for an heir or heirs with access to financial resources necessary to buy out the petitioning party within the requisite 60 days prescribed in the UPHPA, low-wealth heirs are left without a viable recourse to retain ownership or any wealth production from the property. Moreover, any heir interested in the buyout must purchase the petitioning party's interest at the determined market value, thus increasing the financial outlay of the heir or heirs and, in turn, decreasing the number of heirs who can exercise the buyout provided by the Act. Protections are needed for those heirs.

Researchers state that the failure of African Americans to engage in estate planning is attributable to several factors (Guthrie 2007). Distrust of government, lawyers, and the judicial system as well as lack of access to legal counsel chill preparation of a will or other estate planning documents. Many African-Americans property owners believe that their children will ultimately inherit title to the property, thus providing security for the family. Whether failure to engage in estate planning stems from a lack of knowledge, reluctance, or distrust, decedents

[2] De Marco, A.; Hunt, H. 2018. Racial inequality, poverty and gentrification in Durham, North Carolina. http://www.law.unc.edu/documents/poverty/publications/durham_report_final.pdf. [Date last accessed: May 24, 2019].

[3] To be clear, these changes are not taking place uniformly across the country. There remain significant areas of the country, particularly cities in the older, industrial Midwest and Northeast like Flint, MI, and Youngstown, OH, where populations continue to decline (Kondo et al. 2016).

desire their heirs to benefit from any property they have accumulated rather than lose this cultural and financial asset to outsiders.

I submit that property law must be expanded even more, such that a new set of rights is created to protect the desire of the decedent, which is to see the benefit and use of real property inhered to the heirs. This is analogous to applying the doctrine of cy pres as an equitable remedy. My proposed remedies would honor this core intent to provide family members security and wealth creation opportunities into the future.

I propose two options. First, create an *ownership interest in the development profits*, designated for the heirs/former cotenants. If the land is changing primary usage, heirs who held an interest in the ruptured cotenancy should receive a percentage of the development profits from the redeveloped site. The share of the development profits can be placed in a trust, thus making each former cotenant a beneficiary who maintains the same rights to profits from the trust in proportion to their ownership interest in the cotenancy pre-rupturing. If investors-speculators choose compulsory partitions to acquire property, an equitable division of future profits is still accomplished. The equitable trust will follow established trust laws including payment for administering the trust paid from the trust proceeds.

Second, issue an *equitable license* to the former cotenants to create the right to receive a share of future profits. Although the current definition of a license is limited to the personal privilege to do one or more acts on the land of another, a statutory expansion of the rule could provide "a personal privilege to an individual to receive compensation generated by real property" (Craig-Taylor 2000). This expansion is similar to the "au droit" or moral rights doctrine found in the protection of creative art. Since the creative work is deemed an expression of the personality of the artist, it remains linked to the artist for a lifetime, and the artist's interest is protected (California Civil Code § 987, Berne Convention for the Protection of Literary and Artist Works 1971). This would provide cotenants with the right to pursue a percentage of the increase in the value of the property or in the profits in perpetuity within a reasonable time period. Just as with easements, the right can be permanent or for a fixed period. If States chose the reasonable time period, I suggest following the same time period as set out for adverse possession in each State.[4] Arguably, it is prudent to adopt the same statutory period as the minimum reasonable period of time for the heirs to maintain their equitable license. The licenses must be written and meet all recordation requirements of the State in which the property is located. The recordation of the licenses would ensure the right of the heirs/cotenants to seek payment and to increase their wealth proportionate to the increase in the property value or profits of the investor-speculator measured by the resale price or value. The license should be reserved in the deed of the new owner. Attorney's fees must be provided to allow access to proper legal representation to enforce the rights of the heirs/cotenants under the equitable license. This would be analogous to the fee allotment established in Social Security cases and Workers' Compensation cases.

The equitable license and development profits are the radical substitution for retaining ownership of the property and honoring the decedent's core intent. Adoption of these new protections will be met with significant resistance, especially in States where property rights are fervently protected. However, both proposals actively protect the property rights of heirs divested by a statutory right to partition and diminish the impact of the wealth disparity of the parties. As more property owners resist the government's use of eminent domain as a means to take private property and subsequently vest title in a different private property owner, this same group of advocates and legislatures could potentially be organized to assist in this legislative reform to fight the quasi-taking of private property through judicial partition (Institute for Justice 2000, Somin 2011, Thompson Fullilove 2007). New partners are needed to win the necessary legislative support. In addition, the growing wealth gap between African Americans and Whites is a major concern. States should see heirs' property as potential wealth and/or a source of income for the cotenants, thus creating a stable stream of income for these households and reducing the long-term need for public assistance for those who may land under the poverty threshold (Bouie 2019).

The backdoor option of judicial partition sales as a means to strip wealth must be countered with remedies to address quasi-takings in an equitable manner that preserves the sanctity of property ownership. I have proposed two strategies with roots in existing and long-standing property law to create a mechanism to protect generational wealth of heirs who lose their property interest through partition sales. Currently, the law provides a means to vest possessory rights with one owner and to extract profit from another. The proposed equitable license and development profit are expansions of the existing license and "au droit" laws. These expansions are essential to the protection of generational wealth in heirs' property and provide remedies for those heirs unable to exercise the buyout option in the UPHPA.

[4] The legislatures of each State have already established a time period that is reasonable for an adverse possessor to obtain full legal title to the land of another.

LITERATURE CITED

Berne Convention for the Protection of Literary and Artistic Works. 1971. Reprinted in 4M. Nimmer, D. Nimmer on copyright. App. 27-5-6 9 (1985).

Bouie, J. 2019. The widening wealth gap between African Americans and Whites. Washington Post. https://slate.com/news-and-politics/2017/09/the-wealth-gap-between-whites-and-blacks. [Date last accessed: May 27, 2019].

California Civil Code § 987 (West 1998).

Chemtob, D.; Portillo E. 2019. Investors bombard gentrifying areas in Charlotte with offers. But experts caution. The Charlotte Observer. Feb 20: Business Section.

Craig-Taylor, P. 2000. Through a colored looking glass: a view of judicial partition, family land loss, and rule setting. Washington University Law Quarterly. 78(3): 737–788.

Craig-Taylor, P. 2011. The sorcerer's apprentice: a potential misappropriation of power in the implementation of community block grants. Rutgers Race and Law Review. 12(1): 68–77.

Deaton, B.J. 2005. Land "in heirs": building a hypothesis concerning tenancy in common and the persistence of poverty in central Appalachia. Journal of Appalachian Studies. 11(1/2): 83–94.

Flocks, J.; Lynch II, S.; Szabo, A. 2018. The disproportionate impact of heirs property in Florida's low-income communities of color. Public Interest Law. 92(8): 57.

Georgia Appleseed. 2013. Unlocking heir property ownership: assessing the impact on low and mid-income Georgians and their communities. Atlanta, GA: Georgia Appleseed Center for Law & Justice. 17 p. https://gaappleseed.org/media/docs/unlocking-heir-property.pdf. [Date last accessed: May 13, 2019].

Guthrie, R. 2007. Heir property: legal and cultural dimensions of collective land ownership. Bulletin 667. Auburn, AL: Alabama Agricultural Experimentation Station.

Institute for Justice. 2000. Kelo eminent domain. Eminent domain without limits?: U.S. Supreme Court asked to curb nationwide abuses. https://ij.org/case/kelo/. [Date last accessed: May 27, 2019].

Kondo, M.; Hohl, B.; Han, S.H.; Branas. C. 2016. Effects of greening and community reuse of vacant lots on crime. Urban Studies. 53(15): 3279–3295.

Maciag, M. 2015. Gentrification in America report. Governing: the States and localities. http:/www.Governing.com/gov-data/census/gentrification-in-cities-governing-report.html. [Date accessed: April 15, 2019].

Mitchell, T.W. 2001. From Reconstruction to deconstruction: undermining Black landownership, political independence, and community through partition sales of tenancies in common. Northwestern University Law Review. 95: 505–580.

Rivers, F.; Stephens, J. 2009. Preserving heirs' property rights in coastal South Carolina. In: Pavel, P., ed. Breakthrough communities: sustainability and justice in the next American metropolis. Boston: MIT Press: 183. Chapter 17.

Somin, I. 2011. The judicial reaction to Kelo. Albany Government Law Review. 4: 7–15.

Thompson Fullilove, M. 2007. Eminent domain and African Americans: what is the price of the commons? In: Perspectives on eminent domain abuse. Vol. 1. Arlington, VA: Institute for Justice. https://ij.org/wp-content/uploads/2015/03/Perspectives-Fullilove.pdf. [Date last accessed: May 27, 2019].

Taking It to the People:
Essays on the Experiences of Direct Legal Service Providers

Addressing Heirs' Property in Louisiana: Lessons Learned, Post-Disaster

Christy Kane, Stephanie Beaugh, and Gerren Sias

After disasters like hurricanes and floods cause property damage, low-income homeowners are often unable to access government rebuilding grants and insurance funds because they lack clear title to inherited family homes. Since 2007, Louisiana Appleseed has been working on title issues involving inherited property in Louisiana and has learned many lessons. First, legislative advocacy and education of community members and policy makers are essential for removing roadblocks to rebuilding efforts. As decision makers craft legislation and policies, legislators need to understand the impact of unclear title so they can make necessary and vitally important decisions regarding post-disaster restoration, elevation and relocation of homes in the face of rising sea levels, coastal land loss, and flooding. Second, forming partnerships with government, legal services, other nonprofits, and community leaders is necessary in order to successfully identify systemic problems, formulate solutions, and effect change. Third, post-disaster problems revealed the need to help homeowners with title issues to be proactive to ensure that clear title passes to the proper heir or heirs. Only then can families truly protect their property, helping not only themselves but generations to come and the community a large.

LOUISIANA APPLESEED—OUR MISSION

Louisiana Appleseed—founded in 1997 and reconstituted in January 2007—is part of a national network of 17 public interest law centers in the United States and Mexico. We are a legal nonprofit dedicated to solving Louisiana's toughest problems at the root cause. Our approach is unique: we engage professionals to donate pro bono time to perform policy-oriented research and advocacy. Louisiana Appleseed forms partnerships and works with government, legal services, and other nonprofits to identify systemic problems, formulate solutions, and engage pro bono counsel to advance social justice by effecting change at the policy, or systemic, level. This innovative approach allows our organization to achieve its mission and create maximum impact in a cost-effective manner. Louisiana Appleseed's projects focus on increasing access to justice, opportunity, and education. Since its inception, Louisiana Appleseed and its volunteers have advocated for improved inheritance and succession procedures and educated lawyers and community members about heirs' property.

DISASTER STRIKES—TWICE

On August 29, 2005, Hurricane Katrina hit New Orleans and flooded 80 percent of the city.[1] Some areas were inundated with more than 10 feet of water.[2] In the Gulf Coast region, Katrina displaced more than a million people.[3] Up to 600,000 households were still displaced a month after the storm hit.[4] Hurricane Rita hit southeast Louisiana less than a month after Katrina. Additional flooding further prolonged the region's recovery.[5]

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[1] Appleseed. (2006, June). *A Continuing Storm: The On-Going Struggles of Hurricane Katrina Evacuees*, pp. 1, 15–16. Retrieved from Texas Appleseed: https://www.texasappleseed.org/sites/default/files/25-HurricaneProjectPublication.pdf [Date last accessed: May 6, 2019] (Appleseed, *A Continuing Storm*).

[2] Plyer, A. (2016, August 26). *Facts for Features: Katrina Impact*. Retrieved from The Data Center: https://www.datacenterresearch.org/data-resources/katrina/facts-for-impact/ [Date last accessed: May 6, 2019]. (Plyer, *Facts for Features*).

[3] See Appleseed, *A Continuing Storm*, p. 1.

[4] See Plyer, *Facts for Features*.

[5] *Id.*

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At their peak, hurricane shelters housed 273,000 evacuees and, later, Federal Emergency Management Agency (FEMA) trailers housed at least 114,000 families.[6] Katrina damaged more than a million housing units in the Gulf Coast region.[7] About half of these damaged units were located in Louisiana. In New Orleans alone, 134,000 housing units—70 percent of all occupied units—suffered damage from Hurricane Katrina and the subsequent flooding.[8] By early October of 2005, the last of the flood water was finally removed from New Orleans and residents started returning home in an attempt to rebuild their homes and revitalize their communities.[9]

FEMA fielded 1.7 million requests for aid over three States—Louisiana, Alabama, and Mississippi.[10] The total damages from Hurricanes Katrina and Rita were approximately $150 billion—$135 billion from Katrina and $15 billion from Rita.[11]

THE EMERGENCE OF HEIRS' PROPERTY PROBLEMS

After the 2005 hurricanes, some Louisiana residents were hit with another problem—they were unable to receive Federal and State aid for property damage caused by these disasters. These residents owned their homes; most even paid property taxes. Legal documents, however, did not list them as the owners of the property. Residents lacked "clear title." Their homes were passed down through generations by family agreement but not through the legal system with the correct paperwork. The hurricanes of 2005 thus revealed a systemic problem that had been around for decades yet invisible to the naked eye: heirs' property.

Heirs' property arises when the necessary legal paperwork is not completed after a property owner dies. Heirs are persons related to the deceased property owner by blood or marriage or named in a will and alive when the property owner dies. Upon death, the decedent's ownership interests in the property immediately pass to the living heirs, however, title to the property does not automatically transfer to the heirs. Rather, if immovable property was part of the decedent's estate, heirs had to file a succession in court and obtain a Judgement of Possession before heirs could obtain clear title. Many heirs, especially low-income heirs inheriting small estates, could not afford the necessary legal paperwork due to high court costs and attorneys' fees associated with this required process. Without this paperwork, title to the property remained unclear and "unmarketable," meaning that selling the property would be extremely difficult.

If an heir does not have clear title to land, the heir can sell only his or her fractional interest in the property and not the entire interests of all the co-heirs. Further, co-heirs may be limited in their ability to make repairs to the property, borrow money against the property, cash an insurance check, negotiate with a bank on a foreclosure, qualify for government aid to fix the house, obtain a homestead exemption, get notice of city or parish actions against the property, or have a court rule on probate actions.

The 2005 hurricanes illuminated the fact that, over the last century, numerous Louisiana residents had inherited small estates—but did not have the requisite documentation to substantiate their ownership. The collective lack of clear title represented a seemingly insurmountable barrier to community rebuilding efforts. With no proof of ownership, homeowners were being denied FEMA funds, Small Business Administration (SBA) loans, and other recovery funding.

By early 2007, other nonprofits and organizations were trying to rebuild parts of the Ninth Ward and other disaster-stricken areas after Hurricane Katrina. Organizations helping with the rebuilding efforts learned that FEMA and the State recovery program, Road Home, had denied applications for rebuilding funds because residents could not prove ownership; these organizations asked Louisiana Appleseed for help. As a first step, Louisiana Appleseed's lead volunteer successfully advocated for the extension of application and appeals deadlines for those with successions and title issues. As this work progressed, however, the need for statewide reform to Louisiana's small succession[12] laws emerged.

THE NEXT STEP: LEGISLATIVE REFORM

To address title issues, Louisiana Appleseed began its legislative reform by selecting a legislative champion, then State Senator Edwin Murray, and asking him to propose a study resolution in the Louisiana State Legislature to make changes to small succession laws. In 2008, the study resolution was passed, which formed a

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[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] See Appleseed, *A Continuing Storm*, p. 1.

[11] See Plyer, *Facts for Features*.

[12] In Louisiana, "succession" is the name given to the legal process of transferring ownership of property to heirs or people named in a will. Louisiana law defines "small" succession as a succession involving property valued below a certain amount. See LA. C.C.P. art. 3421.

legislative committee to study the effects of ownership of heirs' property and issued recommendations. Louisiana Appleseed provided the committee with the background, research, and recommendations necessary to develop and implement the legislation.

In 2009, Louisiana Appleseed, its volunteer attorney, Malcolm A. Meyer of Adams and Reese, and Senator Murray successfully advocated for the passage of legislation which changed the law on small successions. The revised law allowed, for the first time, the use of a small succession affidavit—or an "Heirship Affidavit"—for immovable property (houses, land, and funeral plots).[13] Thanks to the revisions, thousands of Louisiana residents were provided access to a legal procedure making it easier and less costly to clear title. The revised law allowed property owners to use the affidavit to obtain clear title if the estate was valued at less than $75,000 at the time of the decedent's death. The affidavit can typically be used only if the property owner died without a valid will and requires: date of death of the deceased and his or her home address at the time of death; marital status of the deceased and the name and address of the surviving spouse, if any; names and last known addresses of heirs and their relationship to the deceased; and legal description of the property. The affidavit must be mailed to the last known address of all co-heirs and allow the heirs 10 days to object. The intent of this legislation was to provide a less expensive and easier way to clear title. Small successions no longer had to be filed in court, which saved time and court costs for families.

In 2011, Louisiana Appleseed and its volunteers successfully advocated for another revision to the small succession laws, which expanded the use of the small successions affidavit.[14] The law removed the residency requirement so that the claimant did not have to live in or on the property that was being transferred. The affidavit was also available to non-residents of Louisiana, even non-residents with a will, if the will had been probated elsewhere. An affidavit could simply be recorded with the conveyance office in which the immovable property was located, describing the property and naming the heirs, and then the property was legally transferred.

Later, in 2012, Louisiana Appleseed and its volunteers helped successfully pass another amendment to the succession laws, expanding the use of the small succession affidavit even further.[15] This legislation allowed for the use of the small succession affidavit, thereby eliminating the need to open court succession proceedings for all estates where the property was valued at $75,000 as of the date of the property owner's death, or estates of any value if the date of the property owner's death occurred at least 25 years prior to the filing of the affidavit. Through these revisions to the law on small successions, more Louisiana residents were provided with a less expensive and easier way to clear title.

ANOTHER DISASTER STRIKES

In 2016, another natural disaster struck Louisiana. On August 12, 2016, severe flooding impacted one-third of Louisiana's parishes. Over 10 days, an estimated 6.9 trillion gallons of rain fell in the Greater Baton Rouge, Northshore, and Lafayette areas. Over 10,000 people were evacuated. In a report commissioned by Louisiana Economic Development, it was estimated that the 2016 floods totaled over $8.7 billion in damages.[16] For many families, the lack of clear title to inherited property created serious barriers to recovery. Owners without clear title cannot sell the property, use the property as collateral for a loan, or get Federal or State disaster aid for home repair. Without clear title, banks cannot lend, and insurance companies cannot pay out on claims, causing property across the city to remain in disrepair and become blighted. After the 2016 floods, Louisiana Appleseed learned that FEMA again denied funds to homeowners who did not have clear title to their property. This time, the State recovery program, Restore Louisiana Homeowner Assistance Program, also required proof of ownership to be eligible for recovery funds.[17]

Louisiana Appleseed and its volunteers—faced with this new series of events and difficulties—again sought to expand Louisiana's small succession laws to provide more Louisiana residents with an avenue to obtain clear title and to help families build wealth for the next generation. Along with volunteers Patty McMurray (attorney with Baker Donelson) and Madison McMurray (University of Virginia School of Law student), Louisiana Appleseed worked with another legislative champion, State Representative

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[13] See La. C.C.P. art. 3421, as amended by Act 81. A small succession affidavit is a statement under oath by two or more heirs (including the surviving spouse, if any) as to certain facts.

[14] La. C.C.P. art. 3432, as amended by Act 323.

[15] La. C.C.P. art. 3421, as amended by Act 618.

[16] Terrell, Dek. (2016, September 28). *The Economic Impact of the August 2016 Floods on the State of Louisiana.* Retrieved from Louisiana Economic Development: http://gov.louisiana.gov/assets/docs/RestoreLA/SupportingDocs/Meeting-9-28-16/2016-August-Flood-Economic-Impact-Report_09-01-16.pdf [Date last accessed: May 6, 2019].

[17] Funded by the U.S. Department of Housing and Urban Development, the Restore Louisiana Homeowner Assistance Program is available to provide recovery assistance to homeowners in Louisiana affected by the severe flooding that occurred throughout much of the State in 2016.

Paula Davis, on proposed legislation. In 2017, they successfully advocated for another revision to the small succession laws. The revision raised the value of the estate from $75,000 to $125,000 and allowed for more property owners to use the heirship affidavit for estates of any value where the property owner died over 20 years ago, reduced from 25 years.[18] Through the revisions to the law on small successions, more Louisiana residents were provided with an opportunity to clear title.

COLLABORATIVE EFFORTS HELP EFFECT CHANGE

Following the 2005 hurricanes and the 2016 floods, various organizations, nonprofits—including Louisiana Appleseed—and community members across the State joined efforts to help those in need.[19] After Katrina and Rita, these organizations and many other project partners worked together on a 2-year project to provide community education, outreach, and direct legal services to address post-disaster succession issues and title problems. Together, Louisiana Appleseed and its project partners educated the community about heirs' property and the importance of clearing title, advocated for further changes in the law, and provided free legal services to low-income individuals with title problems. During that time, volunteers helped preserve home ownership for over 740 homeowners, with an economic benefit of more than $10 million in New Orleans alone.[20]

Furthermore, after the August 2016 flood, Louisiana Appleseed and Southeast Louisiana Legal Services (SLLS) received funding from the Baton Rouge Area Foundation to address heirs' property and title issues in the areas most affected by the flood.[21] At that time, the "Flood Proof" program was established.[22] This program was a 2-year collaborative effort to educate the communities affected by the flooding about heirs' property, provide direct legal services, and advocate for more changes to the small succession laws. Overall, these collaborative efforts helped save over 360 homes in the Baton Rouge area, creating an economic benefit of more than $7 million.

LOUISIANA APPLESEED'S VISION FOR THE FUTURE—A PROACTIVE APPROACH

Louisiana Appleseed is still working to expand efforts across the State. Staff, community partners, and volunteers continue developing projects that take a proactive approach to disaster response and title issues, rather than a reactive one. Funding from the Greater New Orleans Foundation enables Louisiana Appleseed to continue educating residents of coastal parishes, who are especially prone to coastal erosion and flooding. Through this proactive approach, Louisiana Appleseed can equip residents in these parishes with the knowledge, as well as the ability, to obtain clear title to their homes before another disaster strikes.

CONCLUSION

Since 2007, Louisiana Appleseed's heirs' property and title clearing projects have been a huge success for various reasons. Through legislation and education, Louisiana Appleseed, volunteers, and project partners helped residents preserve homeownership throughout Louisiana. Specifically, Louisiana Appleseed and project partners helped clear title for more than 1,100 property owners with more than $17 million in economic benefits being returned to the community. Louisiana Appleseed built relationships with more than 100 organizations and faith-based communities throughout the State of Louisiana and educated thousands of people through canvassing, outreach events, educational pamphlets, and radio, print, and television ads. Through all of these efforts, Louisiana Appleseed learned the importance of making our communities more resilient. Thus, since building a network that prides itself on preparation and education, Louisiana Appleseed continues to educate residents about being proactive and getting the paperwork straight beforehand to ensure that clear title passes to the proper heirs in order to effect lasting, systemic change that will assist generations to come and will pay major dividends when the next disaster strikes.

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[18] See La. C.C.P. art. 3421, as amended by Act 96.

[19] For this project, Louisiana Appleseed partnered with Southeast Louisiana Legal Services, The Pro Bono Project, and the Lawyers' Committee for Civil Rights Under Law.

[20] This amount includes recovery benefits obtained, insurance proceeds assessed, and equity protected.

[21] Funding was also received from the W.K. Kellogg Foundation, the Louisiana Bar Foundation, and the Louisiana Disaster Recovery Alliance.

[22] For the "Flood Proof" program, Louisiana Appleseed partnered with SLLS, Southern University Law Center, LSU Law Clinic, the Baton Rouge Bar Association, the American Bar Association Center for Innovation, and the Louisiana State Bar Association.

African-American Land Tenure and Sustainable Development: Eradicating Poverty and Building Intergenerational Wealth in the Black Belt Region

Edward "Jerry" Pennick and Monica Rainge

The absence of clear, enforceable rules and the lack of a simple piece of paper, like a deed, are often roadblocks on the pathway from poverty to prosperity for the world's poor. — (Danilovich and Reckford 2008)

INTRODUCTION

Throughout the world, especially in areas of persistent poverty, many advocates believe that land ownership coupled with sustainable economic development are key to eliminating poverty, especially in rural areas but also indirectly in urban centers. An economically viable rural America helps reduce outmigration. In many cases, well-paying jobs and affordable housing in large cities are still relatively scarce for those without sufficient education or marketable skills. While land ownership is important for sustainable economic development, the impact and value of African-American land ownership is often ignored by policymakers in the United States. However, there is a long tradition within the African-American community itself that views land as key to economic and political independence.

This is supported by a preliminary study conducted by the Federation of Southern Cooperatives/Land Assistance Fund (FSC/LAF) on intergenerational attitudes toward land. The study found that African Americans in all age groups valued land ownership as essential to building wealth and political advancement (Jordan et al. 2009). Yet, there has never been a concerted, financial commitment and long-term effort to parlay those values into land-based economic development programs that are rooted in the community. There have, however, been several attempts to reach that goal—such as the U.S. Endowment for Forestry and Communities-led Sustainable Forestry and African American Land Retention Program which focuses almost exclusively on forest landowners' access to specific U.S. Department of Agriculture (USDA) services [e.g., National Resources Conservation Service (NRCS) Environmental Quality Incentives Program (EQIP)]—yet there has never been a well-resourced holistic and long-term land-based economic development program that addresses the complexities of African-American land tenure especially as it relates to heirs' property.

African-American land ownership has helped guide and support the march toward freedom and sustainability for generations, even in the face of physical harm, death, and an unjust justice system that has often conspired to dispossess the African-American community of this critical asset and power base.

This article provides a framework for developing solutions to the problem of systemic poverty in the rural South, with land access and sustainable development forming the key component of those solutions.

BRIEF HISTORY[1] OF AFRICAN-AMERICAN LAND LOSS

Former slaves viewed land as key to advancing freedom beyond the removal of chains and welcomed General W.T. Sherman's Field Order 15 (better known as "Forty Acres and a Mule"). Field Order 15 provided freed slaves (men) with 40 acres of abandoned land along the

[1] A more in-depth history can be found in the book, *Land & Power: Sustainable Agriculture and African Americans* (Jordan et al. 2009).

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Sea Islands; however, that dream of land ownership and economic independence was short lived as President Andrew Johnson restored most of the abandoned land to the original (White) owners. Yet, with little assistance and few resources, it is estimated that African Americans were able to amass 15 million acres of land by 1910 (Browne 1975). Racism, discrimination, and lack of access to resources soon led many African-American landowners to seek better opportunities in northern urban centers, thus beginning the Great Migration and the further decline of African-American land ownership. The decline continued almost unabated, and today there are <3 million acres of African-American farmland. However, according to the 1997 Census of Agriculture (USDA NASS 1999), the African-American rural land base was 7.8 million acres of all rural land. This land was valued at 14 billion dollars. It would therefore be safe to assume that total African-American land ownership today is at least two times the amount of African-American-owned farmland. This is a hidden asset that needs to be tapped in order to move the Black Belt region toward sustainable economic development, but lack of estate planning resulting in "clouded" titles and insufficient outreach and legal assistance are primary factors that contribute to the loss of African-American-owned land.

The FSC/LAF[2] estimates that as many as 60 percent of African-American landowners do not have an estate plan (Emergency Land Fund 1980). When a landowner does not have a will, or other type of plan for transferring land ownership to another, State law determines how that land is passed down to survivors. When land or other possessions are passed down to heirs according to State law, it is called *intestate succession*, which creates a tenancy-in-common, or heirs' property. Those who are entitled to inherit heirs' property under State law share ownership or co-own the property. Each co-owner owns a fractional, undivided interest in the land.

One primary disadvantage of owning heirs' property is that, with each passing generation, the number of co-owners can increase exponentially, thus further clouding title. The following are typical problems associated with heirs' property:

- Heirs' property is often co-owned by individuals who have no connection or even knowledge that they co-own land.
- Heirs' property may not be managed properly (e.g., payment of annual property taxes, development and implementation of land utilization plans, etc.).
- Lack of or no management of heirs' property sometimes results in land loss due to such factors as partition sales, tax sales, adverse possession, etc.
- The title complexities of heirs' property render it virtually ineligible for participation in government and private programs that benefit farmers and landowners.

The ability to make basic but correct decisions when confronted with the above problems requires landowners to have a sound knowledge of their rights and responsibilities as landowners; however, the lack of qualified and/or trustworthy attorneys in the rural South is an ongoing and serious problem for African-American landowners. Where there are competent attorneys, oftentimes heirs' property cases are so complex and resources are so limited that they are unable to provide the necessary legal assistance. Without basic knowledge and adequate legal representation, African-American-owned land often falls prey to tax sales, adverse possession, eminent domain, foreclosures, and mineral rights exploitation. There is growing acceptance that African-American land loss is having an adverse impact on sustainable economic development in general and in the Black Belt region in particular.

OPPORTUNITIES FOR CHANGE

In 2008, the USDA Office of Rural Development awarded competitive grants to the FSC/LAF and the South Carolina Center for Heirs' Property Preservation. The two organizations were tasked with developing recommendations on how to solve title issues associated with heirs' property so that the land could become eligible for USDA programs and services, especially housing. This was the second such effort, the first being a 1980 USDA-funded study entitled, "The Impact of Heir Property on Black Rural Land Tenure in the Southeastern Region of the United States," conducted by the Emergency Land Fund. Neither gained much traction; however, they served as the impetus for heirs' property legislation contained in the 2018 Farm Bill which will be discussed later.

There have been some incremental steps in the public and private sectors toward addressing the problem of heirs' property. Below are summaries of those efforts.

- The USDA Risk Management Agency (RMA) is the lone USDA agency that has a history of dedicating resources to solving problems related to heirs' property. The RMA recognizes heirs' property and the lack of estate planning as threats to wealth accumulation and financial security for farmers, and provides grants to community-based organizations to provide outreach

[2] The Emergency Land Fund merged with the Federation of Southern Cooperatives in 1985 and became the Federation of Southern Cooperatives/Land Assistance Fund which allowed a more holistic approach to African-American land retention and economic development.

and education to farmers throughout the South on the importance of a clear title and intergenerational transference of assets. This is a successful model that could be easily duplicated and expanded if adequately resourced.

- Several 1890 Land Grant Institutions have incorporated African-American land tenure issues into their outreach programs. This has led to more and better collaboration between the 1890 institutions and community-based organizations. These collaborative efforts have created opportunity for the 1890 system to make this issue an integral part of its extension program. For example, Tuskegee University has established a course on heirs' property. Through this course, the university's outreach will be strengthened while developing a cadre of new leaders and experts on the subject.
- Although some philanthropic institutions and individual donors have supported initiatives to help solve the problem of African-American land loss, none have dedicated sufficient resources to ensure success. With government and educational institutions collaborating with community-based organizations, philanthropic institutions now have the rare opportunity to stretch their resources without compromising the effectiveness of programs and projects aimed at solving the problem. Moreover, these funds could also encourage long-term collaboration by providing multi-year funding to collaborative efforts.
- For over 50 years, the FSC/LAF's mission has been to reverse the trend of Black land loss and to encourage land-based economic development throughout the Black Belt region. These partnerships are providing rich opportunities for solution-centered research and coordinated advocacy on heirs' property issues. In 2018, FSC/LAF received a grant from Alcorn University's Socially Disadvantaged Farmers and Ranchers Policy Research Center to conduct a study that would better describe the impact of heirs' property on Black farm and land loss and recommend polices that could decelerate that loss and improve access to USDA programs for heirs' property owners. This unpublished study, "Land Loss Trends Among Socially Disadvantaged Farmers and Ranchers in the Black Belt Region from 1969 to 2017," is essentially a follow up to the 1980 Emergency Land Fund study mentioned above.[3] A key policy recommendation from the study is that the USDA's eligibility standards be determined by either control or possession of the land. Control means possession of the land by ownership, written lease, or legal agreement. Currently, to be eligible as an applicant for NRCS assistance, a producer must self-certify written control, which can include such documentation as a lease of the land at the time of application. While heirs' property owners may become eligible for NRCS programs, other agencies within USDA require clear title for participation in their programs; thus, heirs' property owners are shut out from accessing these critical resources, e.g., Farm Service Agency (FSA) loan program.

The most encouraging outcome in decades is heirs' property legislation that was passed in the 2018 Farm Bill. This groundbreaking legislation is the brainchild of the FSC/LAF and establishes policy to increase equity for heirs' property owners by expanding the USDA's eligibility requirements for participation in USDA programs. Introduced by U.S. Senators Doug Jones (D) of Alabama and Tim Scott (R) of South Carolina, along with U.S. Representative Marcia L. Fudge (D) of Ohio, "The Fair Access for Farmers and Ranchers Act of 2018" would provide statutory authority in the Farm Bill to allow producers farming on land that is held by undivided interests without administrative authority to secure access to USDA programs. The proposed legislation would also assist heirs' property owners by:

1. Providing authority in the Credit Title for FSA to make loans available through qualified intermediaries, establishing a revolving loan fund to resolve heirs' property ownership on farmland that has multiple owners
2. Providing authority to the Secretary of Agriculture to collect data and perform analysis on trends in farmland ownership and operation and transitions of farms and ranches to new generations of owners and operators, and to help clarify the impact of unresolved land tenure issues on the ability of producers to operate farms and pass them on to new generations of owners

RECOMMENDATIONS

African-American land loss is a serious problem that requires a long-term commitment, financial and human, from all stakeholders. A collaborative, holistic approach for addressing this issue must bring together different but critical skills and other resources and should include the following:

- Well-resourced Community Based Organizations (CBOs)—Participating CBOs must have a proven track record of successfully addressing the problem. They also need to have a verifiable clientele or membership base. These CBOs are the first line of defense because they are on the ground with a direct connection to the

[3] Federation of Southern Cooperatives/Land Assistance Fund. 2018. Land loss trends among socially disadvantaged farmers and ranchers in the Black Belt region from 1969 to 2017. Unpublished report. On file with: Eloris Speight, Socially Disadvantaged Farmers and Ranchers Policy Center, Alcorn State University, 1000 ASU Drive #449, Lorman, MS 39096-7500.

community. Trust is a major factor in any successful program, and CBOs can provide that trust. CBOs are also experienced in organizing communities around particular issues and directing resources where they will have maximum impact.

- Universities—The 1890 Land Grant Institutions have a long and rich history of working to build sustainable rural communities through land-based economic development that includes agriculture, housing, and business. The 1890s can work with landowners and CBOs to develop and help implement land use plans that will make the land an asset rather than a liability.
- Federal and State Government—Government plays a vital role. It has an array of financial and technical resources it could bring to bear on the problem, but it must work with and listen to the communities on the ground. More resources need to be targeted to farmers, landowners, and communities of color.
- Charitable and Nonprofit Foundations—Foundations have financial resources that could help bring solutions to the problem. Unlike government, foundation resources could be less restrictive, multi-year, and encourage the development of innovative ideas to deal with a problem that is constantly evolving.
- Revolving Loan Fund—When legal assistance, mediation, and other strategies fail, the financial option is often the only one left for family land retention. Whether it is to buy other family members out, bid on family land at a tax or partition sale, or prevent foreclosure, African-American landowners need access to a pool of capital specifically for those purposes. Unfortunately, traditional lending institutions, for the most part, have not been receptive to providing financial assistance to save and develop farms and land owned by African Americans. A nonprofit revolving loan fund should be established to meet these critical needs. It could be housed within an existing organization or an independent entity, supported by a network of community organizations.
- Stakeholder Summits—An annual African-American land tenure summit of stakeholders should be held at an 1890 institution (preferably Tuskegee University given its history of addressing the problem) to develop a comprehensive, long-term, and outcome-based strategic plan that supports a shared agenda. This would also be a time to annually evaluate progress and make adjust as needed.
- Uniform Partition of Heirs Property Act—Heirs' property laws vary from State to State; however, none adequately address the problems associated with heirs' property, especially partition sales. The FSC/LAF advocated for a uniform heirs' property statute for over 25 years, which was finally developed by the Heirs' Property Retention Coalition. Variations of the statute, the Uniform Partition of Heirs Property Act, have been enacted in 11 jurisdictions (Nevada, Georgia, Montana, Alabama, Arkansas, Connecticut, South Carolina, Hawaii, Iowa, Texas, and New Mexico). Essentially, this Act provides heirs with the opportunity to keep the land in the family. It also provides uniformity across States. A well-resourced advocacy and education effort is needed to ensure passage in all 50 States, especially the Black Belt region.
- Mandatory Mediation—Mandatory mediation gives the heirs' property interest holders some control over the process when a dispute arises. Family members would at least have to communicate with each other and try to compromise before the court becomes involved and they lose all control when, more often than not, a judge orders a partition sale. Once an interest has been sold to an outsider, mediation might not be effective; however, the problem could possibly be addressed through the Uniform Partition of Heirs Property Act.
- Modifications to Legal Services Regulations—Most African-American landowners are land rich but cash poor. Unfortunately, land ownership might disqualify them for legal services assistance. Regulations should be modified to place more emphasis on actual income, making land ownership less of a factor when calculating eligibility for assistance.
- Student Loan Forgiveness—This program would only apply to students who are interested in becoming attorneys. Students would be selected from law schools around the country with a focus on students of color. In order to secure student loan forgiveness, these students must commit to practicing law in a rural community for a minimum of 5 years. The student loan forgiveness program would apply to only those students who have interned with or are willing to work with reputable law firms that are experienced in the area of heirs' property and estate planning.

CONCLUSION

Since 1910, the decline of African-American-owned land has been constant. Despite this decline, African Americans across generations have understood that land is central to their economic, political, and social advancement. Unfortunately, their aspirations have not been generally accepted by well-meaning public and private entities that profess a desire to assist them with achieving that goal. Instead these entities often employ a one-size-fits-all approach to alleviating poverty without sufficiently taking into account the unique circumstances of African Americans in the rural South. Too often there has been an almost laser focus on research and writing about the problem; while both are important, they should not overshadow the need for solutions. Much of the

research that has been conducted over the past 5 decades on African-American land tenure issues has offered comprehensive and possibly achievable solutions, yet most of those solutions have not been implemented.

There must be greater attention and respect paid to those advocates and organizations on the ground that are combating African-American land loss on a daily basis, often with few resources and support from those who profess concern for African-American economic development in the Black Belt region.

One would be hard pressed to explain how there could be any serious discussion or plan to solve the problem of persistent poverty in the rural South (especially the Black Belt region) without taking into account a 7.8-million-acre asset collectively owned by those who are impoverished.

After over a century of research and failed programs, a well-resourced Black Belt Economic Development Initiative (BBEDI) is required to solve this critical problem. Shirley Sherrod, the first African-American Georgia State Director of USDA Rural Development originated and implemented what is known as the "StrikeForce" program. The goal of the program was to bring together all USDA agencies to target economically underdeveloped and under-resourced counties with a coordinated and holistic approach to economic development. Unfortunately, no additional funds or resources were set aside, and the program has had minimal success—yet small successes showed real promise if the program could be properly funded and expanded. The BBEDI could be a more comprehensive version of StrikeForce and achieve maximum and lasting success. This would require a public and private partnership that adheres to the principle of local solutions and local implementation, one that utilizes the assets of the region—its land and people.

LITERATURE CITED

Browne, R.S. 1975. Only six million acres: the decline of Black-owned land in the South. New York: Black Economic Research Center. 227p.

Danilovich, J.J.; Reckford, J.T.M. 2008. An end to global poverty starts with property rights. The Atlanta Journal Constitution. November 25.

Emergency Land Fund. 1980. The impact of heir property on Black rural land tenure in the Southeastern region of the United States. [Project Director: Rose Sanders. Submitted to the U.S. Department of Agriculture, Farmers Home Administration]. 569 p.

Jordan, J.; Pennick, E.; Hill, W.A.; Zabawa, R. 2009. Land & power: sustainable agriculture and African Americans. [Place of publication unknown]: Sustainable Agriculture Research & Education. 216 p.

U.S. Department of Agriculture (USDA) National Agricultural Statistics Service (NASS). 1999. 1997 Census of Agriculture. http://usda.mannlib.cornell.edu/usda/AgCensusImages/1997/02/02/History.pdf. [Date accessed: March 2018].

The Georgia Heirs Property Law Center, Inc.: Addressing Tangled Title and Economic Security for Georgians

Skipper G. StipeMaas

Heirs property[1] is the hidden story behind blight and poverty in Georgia. The economics are staggering: between 11 and 25 percent of the property in Georgia's 159 counties is likely heirs property. These numbers are based on a study released in 2017 by the U.S. Department of Agriculture (USDA) Forest Service and University of Georgia Carl Vinson Institute of Government, which looked at just 10 Georgia counties and identified 38,120 acres as probable heirs property, representing a total tax-appraised value of $2,148,951,361.[2] If heirs property in 10 counties represents over $2 billion in locked equity, the total tax appraised value of probable heirs property in Georgia is likely over $34 billion.

For each piece of heirs property, whether it is a home or a tract of land, there are multiple legal owners (usually descendants in a family), and no single owner can make major decisions for the property without everyone's agreement. Heirs property, which can be created with or without a will, is equivalent to having a pile of money in a glass box; a family can see their asset but cannot access its equity. For municipalities, this means that billions of dollars in valuable tax-appraised land is owned by a group of individuals where no one person has the legal authority to manage the property in such a way that benefits the family, let alone the tax base.

Co-owners of heirs property have difficulty getting a loan to fix the roof, qualifying for USDA programs to make the land productive, managing timber property to reduce wildfire tinder, qualifying for property tax exemptions, receiving Federal aid after a natural disaster, participating in land conservation programs, or selling the property to convert the asset into funds for other uses. Heirs property is an unstable form of property ownership that inherently affects the relationships of the family owners and limits the family's ability to access the tools that will help them leverage their real property and build generational wealth.

Because I became an heirs property owner at the age of 8, I take this work personally. When my father died unexpectedly, my mother and her six minor children became co-owners of our home and farm in rural south Georgia. While I did not understand that I was an heirs property owner, I was very aware from an early age of the negative impacts this ownership structure had on our lives. Not enough food, lack of running water, and a lack of electricity accompanied arguments with neighboring landowners and others looking to take advantage of our vulnerability. While my friends were outside playing, I was at the courthouse with my siblings being "served" papers regarding the land on which we lived. These papers were numerous, legal-sized pages stapled together with a long, blue backing, called a "blue back," written in a legalese

[1] Georgia law specifically defines "heirs property" (without an apostrophe) as a legal term. Debate about the variations of "heirs property," "heirs' property," and "heir property" as they are presented in the literature, media, and legal documents and which term is "correct" demonstrates the complexity of heirs property.

[2] Pippin, S.; Jones, S.; Johnson Gaither, C. 2017. Identifying potential heirs' properties in the Southeastern United States: a new GIS methodology utilizing mass appraisal data. e-Gen. Tech. Rep. SRS-225. Asheville, NC: U.S. Department of Agriculture Forest Service, Southern Research Station. 58 p.

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that I, as a child, could not even start to understand. At the top was my mother's name followed by "*et al.*" My curiosity as a child about those two small words, "*et al.*," started my lifelong study of what it means to be "*et al.*" This curiosity led me to law school and ultimately to founding the Georgia Heirs Property Law Center, Inc. This is what I have learned:

"*Et al.*" means all of us. It is that simple. In the case of the land where I was raised, *et al.* referred to me, my mother and my five siblings, all heirs and co-owners of our family property. In the case of heirs property, *et al.* can also be used as a reference to all of us, each and every member of society, and the universal impact heirs property has on neighborhoods, municipalities, economies, affordable homeownership and rental stocks, water quality, forest health, and conservation. Heirs property is as much of an issue in rural communities as it is in urban communities. It is in every socio-economic segment of society and every geographic region of Georgia, and it is created every day. Heirs property, when boiled down to its bare essence, is about family and land, the two most complex aspects of all of our lives and fundamental components of our economic system. However, the most important thing I have learned is that legal tools in the hands of committed attorneys and intentional outreach by community advocates can resolve and prevent heirs property so that generational wealth building and community revitalization efforts can succeed. The overwhelming need to stabilize land ownership for individuals and communities for economic growth is the impetus for the Georgia Heirs Property Law Center, Inc.

THE GEORGIA HEIRS PROPERTY LAW CENTER, INC.

The Georgia Heirs Property Law Center, Inc. ("the Center") is a nonprofit law firm that was founded in 2015 with the mission to increase generational wealth, social justice, and community stability by securing and preserving property rights of Georgians. The Center envisions an end to generational poverty achieved by unlocking these property rights, partnering with housing and land management organizations to prevent heirs property, and ending blight and abandonment in Georgia's rural and urban communities.

The Center works throughout the State with targeted outreach in southwest Georgia and Atlanta. The Center currently has offices throughout the State and nine staff members: six attorneys, two community advocates, and a social worker.

The Center is the only nonprofit of its kind in Georgia and is positioned to assess, remediate, and prevent heirs property while also providing financial asset education around home and land ownership. This holistic technical assistance is needed by and provided to individual landowners, municipalities, and nonprofits with the sole purpose of untangling title to unlock the economic and conservation benefits of real property ownership.

The Center empowers each client to exercise their right to self-determination and does not require that the client retain ownership of property after title is cleared or consolidated. If the client decides to sell the property, our staff works diligently to ensure that the client has the support necessary to realize full financial gain from the property. Alternatively, if the client decides to keep the property in the family, our staff provides technical assistance to help the client develop a plan for growing the value of the home or land in a manner that will sustain the client and facilitate the passing of that wealth to the next generation.

THE CENTER'S WORK

The Center utilizes a multi-pronged strategy to mitigate the negative impacts of heirs property. The Center:

- Remediates "tangled title" utilizing a full range of diagnostic and curative tools, including working with clients to determine goals for their property and developing a family tree of heirs; facilitating title searches and surveys; and clearing titles through negotiated agreements, probate, and litigation
- Prevents heirs property by helping clients create simple wills and more complex estate plans with a focus on effective generational wealth transfer
- Provides asset education to help real property owners steward and enhance the value of their home or land
- Provides educational programs on and access to government, private sector, and nonprofit land management/home improvement and disaster relief programs
- Advances a deeper understanding of heirs property—its impact, its cures, and its prevention—by providing research, education, and planning to government agencies and employees, elected officials, attorneys and judges, and nonprofit and neighborhood leaders

Since opening its doors in 2015, the Center has provided legal representation and closed 259 matters, which includes 78 title-clearing matters, 81 title search/audits, and 100 estate planning matters. The title-clearing matters were for properties valued at approximately $2.1 million and were resolved through title clearing, deeds or corrective instruments, formation of Limited Liability Companies ("LLCs"), and removal of liens. In addition, the Center's staff has provided advice and consultation on an additional 79 matters.

As word of the Center's services spreads, demand increases throughout Georgia. The Center's cases are divided evenly in rural southwest Georgia and Atlanta, and include some cases along the coast. Over the past year alone,[3] the Center has fielded 432 applications for title clearing, estate planning, and title auditing services and provided legal representation or advice to 300 individuals statewide. As of May 15, 2019, the Center has 147 open title-clearing matters involving properties in 43 Georgia counties with a total tax-assessed value of $14.1 million. Moreover, the Center and its pro bono attorney volunteers have conducted title audits for 203 properties in 43 Georgia counties collectively valued at $14.1 million.

The Center's average client is 64 years old, has a household income of $29,450 per year, and owns property valued at $86,754.66. Recognizing that even heirs property owners who have the means to pay for an attorney cannot always find an attorney to hire, the Center has a sliding fee scale and currently has 17 open sliding fee scale cases. The Center has completed 271 community outreach programs, held training and stakeholder meetings in 41 of Georgia's counties, and provided information and printed educational materials to 8,900 individuals.

Estate planning that contemplates heirs property prevention breaks the cycle of generational property loss. According to a 2016 Gallup poll, 56 percent of Americans do not have a will.[4] The percentage is even higher in low-income communities that lack access to affordable estate planning attorneys. Title clearing is complex and expensive, and the Center operates under the adage that "an ounce of prevention is worth a pound of cure." To help broaden the reach of our legal services, the Center provides educational materials and workshops for low-income families and the organizations that serve these populations. The workshops emphasize the importance of estate planning with a goal of preventing heirs property. Collaborating with nonprofits, churches, and pro bono attorney volunteers, our staff members conduct hands-on heirs property prevention and wills clinics where low-income clients receive simple wills. In partnership with pro bono legal volunteers, the Center has also conducted four wills clinics and completed 100 estate plans for nonclients. The Center is currently working on estate plans for an additional 35 clients. Four more wills clinics serving low-income urban and rural property owners are scheduled for the next 8 months alone.

Recognizing the need for quality estate forms for use by nonprofits and practitioners throughout Georgia, the Center partners with the Fiduciary Law Section of the State Bar of Georgia to develop estate planning forms and education materials that will be available for free to nonprofits and their volunteers throughout Georgia. These forms will be housed at and maintained by the Center, and will include an updated estate planning questionnaire, annotated last will and testament, statutory power of attorney, and advance directive for healthcare.

As part of its outreach and asset education program, the Center developed the Georgia Landowner Academy in collaboration with Fort Valley State University Cooperative Extension Program, Georgia Forestry Commission, Sustainable Forestry Initiative, and the Golden Triangle Resource Conservation and Development Council. This program, an intensive six-session course for rural Georgians who own at least 10 acres of land, helps landowners develop land/timber management plans, create conservation plans, complete conservation easements, apply and qualify for USDA programs, take advantage of disaster relief programs through the Federal Emergency Management Agency (FEMA), and develop working relationships with each of our partners and their offices throughout Georgia. Participants in the Georgia Landowner Academy also receive a review of the condition of the title of their property, which identifies the record title owner for the property and any liens, encumbrances, or other issues affecting the property. In addition, they are offered an estate plan.

Educating elected officials, attorneys, nonprofit and government employees, and community/neighborhood leaders and stakeholders is a critical aspect of tackling heirs property in Georgia. The Center is working with diverse partners like the U.S. Department of Housing and Urban Development, the Junior League of Atlanta, Inc., Pro Bono Partnership of Atlanta, Atlanta Legal Aid Society, and the Georgia Department of Community Affairs to help affordable housing nonprofits and housing counselors integrate title remediation and estate and resiliency planning into their services. As part of our outreach to government and nonprofit leaders, the Center has received support from the Junior League of Atlanta, Inc. to provide housing nonprofits training on property titles, heirs property issues, and the importance of estate planning.

THE CENTER'S IMPACT

The Center's real work unfolds through the positive impact on individuals and families throughout Georgia. The Center empowers heirs property owners by removing the legal and technical obstacles that prevent owners from accessing the equity in their homes and land. Examples of the Center's impact are powerful and numerous.

[3] Data effective as of May 15, 2019.

[4] Jones, J.M. 2016. Majority in U.S. do not have a will. Gallup. https://news.gallup.com/poll/191651/majority-not.aspx. [Date last accessed: May 7, 2019].

Empowering Property Owners Through Information and Outreach

Oftentimes, it is simply a lack of knowledge that creates and perpetuates heirs property. The Center has found that one of the most powerful tools to prevent and resolve heirs property is educational outreach. For instance, during a recent outreach presentation, a Center staff attorney informed attendees that, under a will, title to a home or land is not transferred until the will has been properly administered with the county probate court5 and the property has been deeded out of the estate. After the program, Mr. Lynn,* who is now a Center client, revealed that he had been holding on to his wife's original will since she passed away in 1980, believing that holding the physical will alone was proof that he owned their home and her interest in family timberland. For almost 30 years, this inaccurate information and lack of access to legal counsel led Mr. Lynn to mistakenly believe he owned those properties. As a result of the Center's outreach, Mr. Lynn has since administered his wife's estate with the county probate court, and the Center is working with him to place title to the family property in his name.

Confusion about ownership and how property is transferred upon the owner's death can also prevent heirs property owners from realizing the full benefits of ownership. Ms. Carter* was referred to the Center after she was cited by a city for housing code violations for her deceased mother's home. Prior to receiving notice of the code violations, Ms. Carter had been unaware that her brother, who had been appointed by the county probate court as administrator of her mother's estate, had recorded a deed purportedly conveying the home to her and that she had "owned" the property for over 2 years. Her brother did not have the benefit of legal counsel and thus failed to convey marketable title[5] to Ms. Carter.

The Center worked with Ms. Carter to properly administer her mother's estate and gain marketable title to the home. Although Ms. Carter was able to correct the code violations, she did not have funds to make substantial repairs to the home. However, she did start mowing the grass and making some small repairs. People noticed changes to the property after being empty for over 2 years, and Ms. Carter started receiving letters from investors with extremely low cash offers for the property. Ms. Carter thought a $10,000 offer was reasonable given the property's tax assessed value of $7,200, but our staff advised Ms. Carter that the property would sell for much more if listed with a knowledgeable real estate agent. The Center provided Ms. Carter with a list of reputable brokers and agencies to consider contacting about her options. Using these resources, Ms. Carter ultimately sold the house for $50,000 and worked with the Center to develop an estate plan to pass some of the proceeds on to her children and grandchildren. During a followup call, Ms. Carter expressed her gratitude to the Center: "The Center was wonderful—they helped me clean up the title and turn an abandoned house into a treasure."

Resolving Heirs Property by Navigating Difficult Family Dynamics and Complex Legal Issues

Clearing title can be a lengthy and complex legal and emotional process. In some cases, however, a relatively short amount of time is required to clear title to property. For example, when there are relatively few heirs to a property or when the family members are largely in agreement, an heirs property case could be resolved in less than a year. Oftentimes, the solution to an heirs property problem may be as simple as administering the estate of a deceased property owner with the county probate court and having an administrator or executor appointed with the proper authority to clear the title to the property.

Ms. Lily* is an example of what can be done with legal tools and perseverance in more complex cases. Ms. Lily's mother owned a house surrounded by 5 acres. In her will, Ms. Lily's mother left the house and surrounding 1 acre to Ms. Lily with the remainder to be split among Ms. Lily and her four sisters. The will named Ms. Lily as executor, so Ms. Lily filed a petition with the county probate court to administer her mother's will. When it came time to distribute the property, Ms. Lily and her sisters could not agree on what to do—Ms. Lily and two of her sisters wanted to keep the family property, while the other two sisters wanted to sell it.

The Center agreed to assist Ms. Lily and her sisters with resolving their disagreement over the property. Ms. Lily had paid the probate expenses and property taxes on the property with little to no assistance from her sisters, which caused financial strain and resentment. One of the sisters did not want the trouble or expense of the property and agreed to give up her share. The property was then surveyed into four tracts, with Ms. Lily receiving the tract with the house and the other tracts being assigned to the remaining three sisters. This meant that the sister who wanted to sell her share had marketable title to do so, while the other three were able to keep their shares—all of which was wealth passed down from their mother to the next generation. This resolution also resulted in the remaining sisters agreeing to reimburse Ms. Lily for their share of the probate expenses and property taxes. Once the Center helped Ms. Lily complete these steps, she

[5] Marketable title is ownership of a house or land that is free from all reasonable doubt, evidences actual ownership, and ensures that the property can be sold to a reasonable purchaser or mortgaged to a person of reasonable prudence.

was able to move past the hurt and resentment caused by the disagreements with her sisters and reestablish those relationships.

The Center frequently sees cases that initially appear simple but later evolve into more complex representations. For example, Mr. Simon* contacted the Center for assistance with preserving his family's land by forming a LLC.[6] His mother's estate had already been probated without the assistance of an attorney. We were initially told that Mr. Simon and his 11 siblings were the only owners and, by his estimation, were steps away from their goal.

After meeting with Mr. Simon and reviewing a title search for the property, one of our attorneys realized that Mr. Simon's reading of his mother's will was mistaken. Distribution of the land from her estate did not, as originally believed, create a joint tenancy with right of survivorship. With a joint tenancy with right of survivorship between the siblings, as each sibling passed away, his or her interest in the property would not pass through his or her estate, but instead would be redistributed to the surviving siblings without the need for probate. Instead, Mr. Simon and his siblings inherited the property as tenants-in-common and thus the property was heirs property, which meant that a deceased sibling's interest in the land would pass to his or her beneficiaries or heirs. As a result, Mr. Simon and his living siblings actually co-owned the property with their deceased brother's five children, resulting in 15 co-owners who would need to be included in any agreement to form an LLC.

The Center is working with Mr. Simon to form an LLC designed to own the property and to finalize an operating agreement with terms agreed upon by all heirs, including those not previously identified as co-owners of the property. As part of this process, our staff will also correct any probate pleadings or recorded instruments to ensure that the LLC receives marketable title to the land.

Families are complex, dynamic organisms, and cultures. As families grow and change, it is critical that they plan how to best preserve or transfer property to the next generation. Mr. Connor* is a good example of this need. He and his first wife Betty* owned a home as tenants-in-common. Betty passed away in 2011 without a will. The couple had three children, all of whom are still living. Mr. Connor contacted the Center for assistance in placing title to the property in his name so that all important documents, including the tax bill, were directed to him and he could handle his affairs accordingly.

Mr. Connor has remarried twice since Betty's death, and the children were reluctant to give up their interests in the property for fear that their childhood home could be inherited by a stepmother. Mr. Connor agreed that he wanted his children, and not any spouse, to inherit the property. As a result, the Center has helped Mr. Connor prepare an estate plan that leaves the property to the children and is working with Mr. Connor and his children to administer Betty's estate with the county probate court and attain marketable title that can be passed down.

Preserving Family Homes and Land

Homes and land are part of a family's heritage. Our client Ms. Ansley* is fighting hard to keep the link to her past and turn her family's heirs property into an income-generating property that will continue to be owned by the family but will also sustain her and her family in the future. For over 50 years, Ms. Ansley's grandfather owned a house and a separate parcel of land in rural Georgia. Ms. Ansley was her grandfather's caretaker and lived with him until his death. After her grandfather's death, her grandfather's will could not be located, and its contents were unknown. Ms. Ansley's mother and her mother's siblings were still living, so Ms. Ansley assumed that they had inherited both properties. The properties began to deteriorate and taxes fell into arrears. Ms. Ansley did her best to maintain the properties and paid several thousand dollars of her own money towards the taxes, all the while believing that she had no legal interest in either of them. Maintaining her grandfather's legacy was simply too important to Ms. Ansley to risk losing the properties.

After the house fell into disrepair, the city sought to demolish and sell the property. Ms. Ansley sought the Center's assistance, and our staff attorney encouraged her to look again for her grandfather's will. Ms. Ansley eventually found it on the dusty top shelf of a closet. In the will, Ms. Ansley's grandfather left the properties to Ms. Ansley and three cousins, and nominated Ms. Ansley to be the executor of his estate.

The Center was able to delay the city's efforts to demolish and sell the home, while Ms. Ansley sought to probate her grandfather's will and use other estate resources to repair the property. With our staff's help, an estate was opened for Ms. Ansley's grandfather, and Ms. Ansley has been appointed executor. Ms. Ansley is working on repairs to the home, which is helping to remediate blight without the need for a forced sale by the city. She is also seeking her cousins' agreement to give or sell their interests in the

[6] With an LLC, heirs property owners transfer their fractional interests in the family property to the company and become co-owners of the company instead of the property. This means that the company will own the property without any further fracturing of title as co-owners pass away. In forming the company, the heirs must agree upon how decisions will be made, the rights and responsibilities of co-owners, circumstances in which the property can be sold, and most importantly, what happens to a co-owner's interest in the LLC when he or she passes away.

properties to Ms. Ansley. As a result, Ms. Ansley is better positioned to protect her grandfather's legacy and be able to pass that legacy on to her three children.

Grandparents raising grandchildren are especially vulnerable to changes in family dynamics and loss of family homes. One of our clients, Ms. King,* is 83 years old and lives in a small home that her grandmother purchased in 1944. Her sole source of income is social security, and she is the primary caretaker for her two young grandchildren. Multiple generations of family members, including her mother, have died without estate plans. The home is now co-owned by dozens of relatives, who, until recently, have assured Ms. King that she can live in the home for free until her death. However, property values have been rising and a developer now wants to purchase the lot, tear down the home where generations of Ms. King's family have lived, and build a newer, larger house on the lot. One of the owners is pressuring the other relatives to sell. The amount that Ms. King would receive from the sale is less than $5,000. None of the other relatives are willing to take her and the grandchildren in, and she cannot afford more than a few months' rent.

Ms. King contacted the Center seeking help in protecting her family's home and her grandmother's legacy. Our staff attorneys are working with Ms. King to reach an agreement with her family that would allow her to remain in the home and ensure a safe and stable environment for her grandchildren. The Center also drafted an estate plan for Ms. King that provides for her grandchildren's future in the event of her death.

Another grandmother faced with complicated heirs property issues is Ms. Raines,* who is the guardian of her three grandchildren, one of whom has cancer. Ms. Raines was living in a property originally owned by her deceased mother and deceased stepfather as tenants-in-common. When Ms. Raines's mother passed away in 2011, her stepfather and his six children inherited interest in the property. Ms. Raines's stepfather then passed away in 2016. With the Center's assistance, Ms. Raines was appointed executor of both her mother's and stepfather's estates, and was able to secure quitclaim deeds from each of her siblings to herself, which effectively cleared the title. Ms. Raines is now sole owner of the property, and as a result, has secure housing for herself and her three grandchildren.

Expanding Center Resources Through Partnerships and Pro Bono Attorneys

While the Center provides critical legal and technical resources to address heirs property, often the legal issues facing clients reach beyond our expertise. In these situations, our partnerships with other nonprofits and pro bono attorneys are critical to developing the best solutions for our clients. For example, Mrs. Donnelly* bought a home with her husband, who subsequently passed away without a will. Mrs. Donnelly incorrectly assumed that she owned the property in her sole name—instead, she co-owned the property with her two adult children. At the height of the real estate bubble and without having full title, Mrs. Donnelly was targeted for a $135,000 predatory reverse mortgage on the home. Mrs. Donnelly managed to pay back some of the loan before passing away, also without a will.

Mrs. Donnelly's two children learned of the reverse mortgage only when the mortgage company began threatening foreclosure for nonpayment. Center attorneys are working with the Donnelly children to probate their parents' estates, place ownership with the Donnelly children as joint tenants with right of survivorship, and prepare estate plans for each of them.[7] At the Center's request, our partner Atlanta Legal Aid Society is assisting the Donnelly children with forestalling the foreclosure and finding refinancing for the reverse mortgage. Once these steps are complete, the Donnelly children will have title to the property and estate plans, which will help them build equity and wealth to pass along to future generations.

Thirty years ago, Ms. Wilson* moved into the property where she currently lives to care for her elderly father. When Ms. Wilson's father later passed away, she believed she was the sole owner of the property since she was her father's sole heir. Ms. Wilson maintained the property and paid the property taxes, but when she recently tried to qualify for homestead exemption and obtain homeowner's insurance, she discovered that she had no ownership interest in the property since the legal title had passed down her stepmother's side. With the assistance of a pro bono volunteer attorney, the Center filed a Quiet Title action, asserting adverse possession. Not only was the Quiet Title successful, it also reunited family members to share stories about their deceased love ones. Ms. Wilson now has clear title to the property with a tax-assessed value of $322,000.00. Since Ms. Wilson is in her 80s, she has decided that the home is too much for her to maintain and plans to sell. The Center worked with Ms. Wilson to

[7] As discussed briefly above, a joint tenancy with right of survivorship is a way to own property that does not necessarily require probate when a co-owner passes away. Title is instead redistributed among the surviving co-owner(s) until there is only one living owner remaining. The property is then distributed according to the terms of the co-owner's will, if there is one, or according to Georgia law if there is no will. Consequently, heirs property can be created by the last surviving co-owner if the co-owners do not also engage in thoughtful estate planning.

assure she hired a reputable relator to get the best price possible. The Center also drafted Ms. Wilson's estate plan so that she can take care of herself and pass wealth to the next generation.

Helping Clients Rebuild and Repair Homes

Oftentimes, the Center's clients are dealing with situations beyond their control that have left their homes and, as a result, their lives, in disarray. We especially see this when storms, tornadoes, and hurricanes come through Georgia. Mr. Howard* lived with his 92-year-old mother in her Atlanta home until it was crushed by a tree during a tropical storm. Mr. Howard's two siblings had both passed away within the previous year, so he and his mother moved in with another relative until they could rebuild and return to the neighborhood they had loved for over 40 years. Before any progress could be made, however, Mr. Howard's mother passed away. Mr. Howard, a niece, and two nephews became co-owners of his mother's home. Because Mr. Howard was not able to show formal ownership, he could not even complete the demolition of the home or negotiate with the insurance company. When Mr. Howard could not find a private attorney willing to help him untangle the complex probate and property title, he became a client of the Center. Mr. Howard, with the Center's help, is now serving as executor of his mother's estate, working with his niece and nephews to resolve title, and moving forward with the rebuilding process. The Center's attorneys also drafted an estate plan for Mr. Howard to ensure that the home can be securely passed on to the next generation.

Heirs property can also prevent individuals from qualifying for home repair programs offered by nonprofits and municipalities. Ms. Wright* is a good example of the barrier that heirs property status creates for individuals seeking assistance. Ms. Wright's parents purchased a house in 1942. After her parents died, Ms. Wright and her six siblings inherited the property as co-owners and agreed that Ms. Wright could live there if she paid the taxes. Decades later, Ms. Wright is now elderly and, due to medical issues, has had to move in with her daughter and grandchildren. The roof on the home is badly damaged, and Ms. Wright's limited income from social security is not enough to pay for a new one. The other owners will not contribute to the repairs, and Ms. Wright cannot get a loan or qualify for a rehab program because she is not the sole owner of the property. The city code enforcement is now inundating Ms. Wright with code violation notices, and Ms. Wright fears that she will be arrested and the home in which she was raised and lived most of her life will be demolished. The Center is working with Ms. Wright to place title to the home in her name which would allow her to qualify for programs to make needed repairs. Once the home is repaired, Ms. Wright will also be able to earn rental income to pay for needed medical care and contribute to her daughter's household expenses. The Center will also draft an estate plan for Ms. Wright that leaves her home to her daughter as a lasting family legacy and provides her daughter with an opportunity to use the home as collateral for a loan that could start a small business or send her own children to college.

CONCLUSION

Home and land ownership should provide cultural, environmental, economic, and political stability from which to operate. Heirs property creates instability, reducing people's ability to manage their homes and land. Consequently, people lose their ability to grow wealth, stabilize communities and tax bases, and sustainably manage our farms, forests, and wetlands. The Center recognizes that each family has to work at its own pace to resolve latent issues and reach agreement in order to secure land for its future. But the future of each family affects the future of all of our communities. The Center's legal services and educational outreach advance economic justice at the micro (individual) and macro (community) level. While the Center is finding that individual heirs property owners, municipalities, and nonprofits are willing and want to work on unlocking the equity in heirs property, each case provides its own twists and turns, and solving the puzzle becomes part of our collaborative economic and environmental stories.

Additional information can be found at https://www.gaheirsproperty.org or by emailing info@gaheirsproperty.org.

*Name has been changed to protect client.

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Real property passed to subsequent generations via intestate succession (i.e., without a will) is termed a tenancy-in-common, or more colloquially, "heirs' property." Property may also be classed as heirs' property via an intentional simple will that divides real estate assets equally among descendants. With this kind of property ownership, co-heirs hold fractional interests in property that is not physically divided. As such, heirs' property represents a form of collective ownership. Owners are private property holders but are limited in their ability to use such properties to build wealth because creditors typically do not accept these properties as bona fide collateral. Heirs' property ownership is thought to be especially prevalent among rural African Americans in the Black Belt South, Appalachian Whites, Hispanics in U.S. southwestern *colonia* communities, and Native American groups (as fractionated lands). The U.S. Department of Agriculture Forest Service's Southern Research Station and the Federal Reserve Bank of Atlanta hosted a gathering of heirs' property researchers and direct legal service providers on June 15, 2017 in Atlanta, GA, with the aim to clarify problems associated with tenancies for these groups. The convening was organized into panels which addressed estimations of the extent of heirs' property in the South, research on cultural aspects of heirs' property ownership, and experiences of direct legal service providers, and included a discussion of how heirs' property in urban areas contributes to abandoned and blighted buildings. Collaborators also worked to identify opportunities that would improve data collection, decrease property vulnerability, and better protect generational wealth. These proceedings include papers from many of the conference presenters as well as papers contributed by additional subject matter experts.

Keywords: Appalachia, Black Belt, heirs' property, land fractionation, land loss, Uniform Partition of Heirs Property Act.